

MISSOURI DEPARTMENT OF NATURAL RESOURCES

LAND RECLAMATION COMMISSION

In the Matter of:

MAGRUDER LIMESTONE CO.,)
INC., Osage Beach)
Quarry, Miller County,)
Missouri,)

Applicant.) Proceeding Under The
LINDA WEEKS, et al.,) Land Reclamation Act,
Petitioners,) Sections

vs.) 444.760-444.789

LARRY P. COEN, Staff)
Director, Land)
Reclamation Program,)
Division of)
Environmental Quality,)
Respondent.)

ADMINISTRATIVE HEARING

APRIL 29, 2008

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(Original exhibits were retained by the Hearing Officer.)

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APPEARANCES

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3 Appearing on behalf of Petitioners City of
4 Osage Beach and City of Lake Ozark were MR. STEVEN E.
5 MAUER and MR. JOHN T. POLHEMUS of Bryan Cave, L.L.P.,
6 1200 Main Street, Suite 3500, Kansas City, Missouri
7 64105-2100. (816) 374-3244. Semauer@bryancave.com.
8 Appearing on behalf of Petitioners Linda
9 Weeks, et al., was MR. BRIAN E. MCGOVERN of McCarthy,
10 Leonard, Kaemmerer, Owen, McGovern, Striler &
11 Menghini, L.C., 400 South Woods Mill Road, Suite 250,
12 Chesterfield, Missouri 63107. (314) 392-5200.
13 Appearing on behalf of the Applicant were
14 MR. RICHARD S. BROWNLEE, III, and MR. ADAM R.
15 TROUTWINE of Hendren Andrea, L.L.C., 221 Bolivar
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13 Director, Land)
14 Reclamation Program,)
15 Division of)
16 Environmental Quality,)
17 Respondent.)
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1 This matter came on for hearing on
2 April 29, 2008, before Administrative Hearing Officer
3 W.B. Tichenor between the hours of 9:00 o'clock in
4 the forenoon and 5:00 o'clock in the afternoon of
5 that day, at the offices of the Missouri Department
6 of Natural Resources, 1101 East Riverside Drive,
7 Jefferson City, Missouri 65102, before Judy K. Moore,
8 a Certified Court Reporter within and for the State
9 of Missouri, in a certain cause now pending before
10 the Land Reclamation Commission, State of Missouri,
11 between MAGRUDER LIMESTONE CO., INC., Applicant;
12 Linda Weeks, et al., Petitioners; and LARRY P. COEN,
13 Respondent.
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2 (Pages 2 to 5)

1 HEARING OFFICER: The Land
2 Reclamation Commission hearing in the matter of
3 Magruder Limestone Company, Inc., proceeding under
4 Land Reclamation Act, Sections 444.760 through
5 444.789 Revised Statutes of Missouri, expansion of
6 Permit No. 0086 is reconvened. According to our
7 agenda, we are ready for Applicant's witnesses,
8 non-expert witnesses, correct, Mr. Brownlee.

9 MR. BROWNLEE: Correct.

10 HEARING OFFICER: Call your first
11 witness.

12 MR. BROWNLEE: As a preliminary
13 matter, your Honor, I would like to reserve the right
14 to recall Mr. McDonald. As you know, we're kind of
15 out of order in that there's going to be potentially
16 testimony tomorrow that might -- I'd like to be able
17 to recall him to act as rebuttal. So at the
18 conclusion of today's case in terms of non-expert,
19 I'm really not actually closing or concluding.

20 HEARING OFFICER: Hearing Officer
21 understands, and you will be allowed to recall if you
22 deem that necessary.

23 MR. BROWNLEE: Okay. Dean, be sworn.

24 DEAN McDONALD,
25 of lawful age, produced, sworn, and examined on

1 behalf of the Applicant, deposes and says:

2 EXAMINATION

3 QUESTIONS BY MR. BROWNLEE:

4 Q. Please state your name for the record.

5 A. Dean Andrew McDonald.

6 Q. And what is your date of birth?

7 A. 11/29/1975.

8 Q. And what is your education starting with
9 your high school graduation?

10 A. I graduated high school from Silex High
11 School, then I graduated from the University of
12 Missouri with a degree in economics.

13 Q. What year would that have been?

14 A. I graduated from University of Missouri
15 Columbia in 1998.

16 Q. Okay. And could you briefly just go through
17 your work history up until the time you were employed
18 with Magruder?

19 A. Prior to Magruder's, I had one other job in
20 between college and working for them, and it was with
21 an agricultural company called GROWMARK, and I
22 managed about 10 or 11,000 acres of agricultural
23 ground.

24 Q. Where was that?

25 A. It was in Mount Sterling, Illinois.

1 Q. Okay. And when were you employed by
2 Magruder?

3 A. I was first employed by Magruder in August
4 of 1998.

5 Q. And what was your employment or job at that
6 time?

7 A. My general title description was sales and
8 marketing and quality control.

9 Q. And what was your -- did you have any other
10 job after that, or just kind of briefly go through
11 your promotions up until your present appointment.

12 A. In 1998 when I started with Magruder
13 Limestone, I basically learned everything from the
14 ground up. There were a lot of changes and
15 regulations both with DNR and MODOT and MSHA, and I
16 kind of was hired at the same time all those changes
17 were going on, so I learned the process, the quarry
18 process in general. And then I also learned some of
19 the new -- any of the new regulations or rules coming
20 into effect, and as time went on I gained more and
21 more responsibility, you know, taking on more
22 responsibility and to the point where -- that I am
23 now.

24 Q. And what is your current position with
25 Magruder?

1 A. Vice-president.

2 Q. And when were you appointed to that
3 position?

4 A. Approximately two years, give or take a few
5 months.

6 Q. And what are your duties as vice-president
7 with Magruder?

8 A. My duties as vice-president is the -- the
9 basic description is I manage the company. Then I
10 have duties that require -- I take care of the permit
11 applications with DNR. I deal with MODOT contracts,
12 with the bidding of MODOT jobs. I deal with -- if
13 there's customer complaints regarding quality or
14 other issues concerned with the quarry, I take care
15 of some of those. Basically oversee, as a
16 vice-president would, the day-to-day operations.

17 Q. After projects are granted, do you deal with
18 any MODOT management that is on-site work during the
19 work process?

20 A. Yes.

21 Q. What about financing, bidding, anything in
22 those areas?

23 A. Yeah. I deal a lot with bidding, both on
24 commercial jobs and MODOT projects. And as far as
25 finances, I have a portion of the responsibility

<p style="text-align: right;">Page 10</p> <p>1 there also.</p> <p>2 Q. The Applicant here, what's the name of the</p> <p>3 actual Applicant in this proceeding?</p> <p>4 A. Magruder Limestone Company, Inc.</p> <p>5 Q. And it's my understanding that there are</p> <p>6 several related, what I call interrelated, companies</p> <p>7 under the Magruder name. Can you kind of just</p> <p>8 briefly list those for the judge?</p> <p>9 A. Sure. There is Magruder Limestone Company,</p> <p>10 Inc. There's Magruder Quarry & Equipment, Magruder</p> <p>11 Holding, Magruder Construction, G&M Concrete and</p> <p>12 Asphalt, Eolia Development. And I may have missed</p> <p>13 one or so, but...</p> <p>14 Q. Do any of those other entities hold DNR</p> <p>15 permits of any sort?</p> <p>16 A. G&M Asphalt -- G&M Concrete and Asphalt</p> <p>17 Company, Inc., does hold some DNR permits.</p> <p>18 Q. Any others?</p> <p>19 A. No.</p> <p>20 Q. And regarding Magruder Limestone Company,</p> <p>21 Inc., could you briefly describe the ownership and</p> <p>22 the history of that business?</p> <p>23 A. Magruder Limestone, Inc., is owned by the</p> <p>24 Magruder family. The history is it was started</p> <p>25 somewhere around 1968 and then became incorporated</p>	<p style="text-align: right;">Page 12</p> <p>1 owned by the Lincoln County Highway Department that</p> <p>2 we have occasionally went in there and done custom</p> <p>3 crushing for.</p> <p>4 Q. Okay.</p> <p>5 A. Foley, we have a Foley ground that is a site</p> <p>6 that we own but is neither operated, nor do we have</p> <p>7 any permits on that ground. The sites that we own</p> <p>8 and operate solely are Silex, which we've operated</p> <p>9 five years and excess. We've operated Bowling Green</p> <p>10 for five years and excess. We've operated Frankfort</p> <p>11 and Ashley for five years and excess and the Troy</p> <p>12 quarry for five years and excess.</p> <p>13 Q. You make reference to five years and excess.</p> <p>14 Is there a significant number in that, the reason you</p> <p>15 mention five years?</p> <p>16 A. Five years is the number of years per this</p> <p>17 hearing that we were going to go back and check</p> <p>18 compliance history.</p> <p>19 Q. Okay. And of those quarries, do you have a</p> <p>20 figure as to how many days a year you operate each of</p> <p>21 those quarries that you're actively utilizing?</p> <p>22 A. A safe number of days that we operate each</p> <p>23 quarry would be 200 days -- approximately 200 days</p> <p>24 per year.</p> <p>25 Q. So for each quarry, that would mean in</p>
<p style="text-align: right;">Page 11</p> <p>1 in, I believe, 1969.</p> <p>2 Q. And does it hold a permit with Land</p> <p>3 Reclamation Commission?</p> <p>4 A. Yes, it does.</p> <p>5 Q. And what is that permit number?</p> <p>6 A. 0086.</p> <p>7 Q. And do you know when it was first granted</p> <p>8 and where?</p> <p>9 A. It would have been first granted at Troy.</p> <p>10 Q. Do you know the year?</p> <p>11 A. No.</p> <p>12 Q. A number of years ago, I'm assuming?</p> <p>13 A. Right.</p> <p>14 Q. Are there other quarries either owned or</p> <p>15 operated by Magruder?</p> <p>16 A. We have a quarry at Sunrise Beach that is</p> <p>17 operated by Magruder Limestone.</p> <p>18 Q. Who owns that? Do you know?</p> <p>19 A. Harry Adrian owns that quarry.</p> <p>20 Q. How long have you had that?</p> <p>21 A. We've been there approximately one year.</p> <p>22 Q. Been operating for one year?</p> <p>23 A. Been operating at that site for one year.</p> <p>24 Q. Okay. What about any others?</p> <p>25 A. There is a Lincoln County quarry which is</p>	<p style="text-align: right;">Page 13</p> <p>1 five years you've operated how many days?</p> <p>2 A. In five years a thousand days.</p> <p>3 Q. So if you had five times a thousand, that</p> <p>4 would be 5,000, and then if you add the Sunrise Beach</p> <p>5 in, what does that get you?</p> <p>6 A. It would be 5,200 days, but there's</p> <p>7 200 days, and Sunrise Beach has been in operation for</p> <p>8 a year.</p> <p>9 Q. So Magruder has been operating in the last</p> <p>10 five years 5,200 work days; is that correct?</p> <p>11 A. That's correct.</p> <p>12 Q. How many NOV's have you received in that</p> <p>13 five-year period for all of those quarries?</p> <p>14 A. 11 NOV's, and one of them may have been</p> <p>15 rescinded.</p> <p>16 Q. Do you have a percentage as to -- percentage</p> <p>17 of NOV's that you've received based upon the 5,200</p> <p>18 work days as related to the 11?</p> <p>19 A. It would be 11 citations in 5,200 -- it</p> <p>20 would be less than a percent -- it would be less than</p> <p>21 one-quarter -- it would be less than a quarter</p> <p>22 percent of total work days.</p> <p>23 Q. Less than a quarter of 1 percent of total</p> <p>24 work days you've received NOV's?</p> <p>25 A. Correct.</p>

1 Q. Now, of the 11, were most of them received
2 at one location, or were they kind of spread over the
3 place?

4 A. Most of the citations, I believe nine, were
5 received at our Troy facility.

6 Q. What were the primary violations, if you can
7 just summarize? And I realize the NOV's will speak
8 for themselves, and we have an exhibit, if necessary,
9 to go through that, but...

10 A. The Sunrise and record keeping and dust
11 violations.

12 Q. And were those mostly at one quarry?

13 A. They were mostly at Troy.

14 Q. Do you know how many of the 11?

15 A. Nine.

16 Q. And when did those occur?

17 A. Between the spring of '02 and early '04, so
18 a year and a half.

19 Q. Is there a reason that during this one and a
20 half year period you feel that there were a number
21 that did occur at Troy?

22 A. Yeah. First of all, Troy is -- is a very,
23 very large plant. In fact, we have two plants joined
24 together. The rock formation at Troy is different in
25 nature than the rock formation that we're talking

1 about at our proposed site. It is a Burlington
2 Chouteau formation, and the rock formation in general
3 is a dustier rock. It has a lower inherent moisture
4 content. But at that time we were doing a lot of
5 changes. We had added a lot of equipment. We had
6 changed a lot of pieces of equipment around and we
7 had contracted or had this group come in that set up
8 a -- on the plant in conjunction with an existing
9 normal water spray system on it what they call a
10 chemical suppression dust control system. And we
11 tried it and we kept -- they kept working on it,
12 adjusting it, and in the end it proved to be
13 ineffective, so during the year of '04, after
14 spending lots of money on the chemical suppression
15 system, we scrapped it and went to a high spray --
16 high pressure water spray system. And that's cured
17 our problem since then. Since the mid '04 through
18 currently today we've not received a dust violation
19 there.

20 Q. Since you've become vice-president of
21 Magruder, have you had any -- explain the compliance
22 record you've had.

23 A. Since I became vice-president of Magruder
24 Limestone, we've had only one citation out of the
25 six quarries that we operate, and that citation was

1 at our Ashley quarry. It was a record keeping
2 citation. An operating permit -- when you renew an
3 operating permit, you are required to send in a
4 renewal application six months prior to... The
5 citation that we received since I became
6 vice-president, as I was stating, was at our Ashley
7 quarry, and as I was stating, it was for not sending
8 in a renewal application six months prior to
9 expiration of the existing operating permit, so it
10 was a paperwork issue.

11 Q. So there's been no dust or any other what
12 you've described as environmental citations?

13 A. No. We have not had a dust issue since
14 then.

15 Q. Yesterday I think there were some questions
16 about whether your quarries have been visited by the
17 Land Reclamation Program let's say in a certain
18 period. Do you have -- does your memory differ from
19 some of the staff regarding that issue?

20 A. Yeah. We -- in general, overall DNR,
21 throughout all the programs, we've been visited on
22 numerous occasions just within the last year. In
23 specific, we -- the Land Reclamation, and I believe
24 Mr. Roberts was there and a couple other people, we
25 asked them to come visit our Ashley quarry as a

1 request to discuss some land reclamation issues that
2 we had. It's something that's not unlike our -- it's
3 common practice if we do have questions. But we
4 invited them to our Ashley quarry. They visited it.
5 This was probably in the last four to five months.
6 And we discussed certain reclamation issues and went
7 on from then.

8 We've also been visited by the Air
9 Pollution Control Program, both at Troy on more than
10 one occasion in the last year with no citations.
11 We've also -- and they may have visited other
12 locations also, but at Sunrise Beach we had an EAV
13 visit early on, which is an environmental assistant
14 visit. It's where they come to your site and offer
15 suggestions or assistance, basically, to make sure
16 that you're in compliance. That was done at Sunrise
17 Beach. And then they also came back and, I believe,
18 inspected it prior to our -- past that time for
19 inspection.

20 Q. Now, I know we've talked about complaints
21 and whether they're relevant or not. How do you
22 respond -- and when I say "you," I mean Magruder --
23 regarding a complaint if you receive one? What do
24 you do just generically?

25 A. Regarding a complaint? And you're referring

Page 18

1 to blasting? Just a general complaint? When a
 2 complaint comes in, it depends on what the complaint
 3 is as to who should be addressed, but it's received
 4 usually in a phone call. It's then transferred to
 5 someone in the upper management position, and then
 6 from then it's dispersed to who needs to handle it,
 7 whether it be, you know, if it was a blasting
 8 complaint and Dyno was the one shooting the shot,
 9 then we would take the call, we would hand the
 10 information to myself, our superintendent, and then
 11 it would be relayed on to Dyno where they can take
 12 care of it. If it was an issue that was beyond what
 13 I thought that I had expertise in, we would hand it
 14 over to our insurance and they would send out
 15 investigators to investigate and to formulate their
 16 opinion.

17 Q. Do you know whether you've ever had to pay a
 18 claim on any complaint?

19 A. To my knowledge, we've never paid a claim on
 20 a complaint.

21 Q. Now, I'd like to kind of turn, if I could,
 22 to just the general way Magruder handles blasting at
 23 your quarries. You mentioned Dyno. Who are they?

24 A. Dyno Nobel? They are, I believe, a
 25 world-wide company that handles blasting. They're

Page 19

1 probably one of the largest blasting subcontractors
 2 in the U.S., but they are a blasting subcontractor.

3 Q. And do you do any in-house blasting
 4 yourself?

5 A. We do do some in-house blasting, both at the
 6 Troy location we do some in-house blasting and
 7 occasionally at our Ashley quarry we also do some
 8 in-house blasting.

9 Q. Are those supervised by licensed...

10 A. Certified blasters? Absolutely.

11 Q. And do you use -- I mean, you use Dyno now;
 12 is that correct?

13 A. That is correct.

14 Q. Do you use any other blasting consultant
 15 from an outside consultant?

16 A. We use a subsidiary, for a better term, of
 17 Dyno named Buckley Powder, and they handle all of our
 18 blasting at our Sunrise Beach location.

19 Q. When you say you use an outside blasting
 20 consultant, what does that entail in terms of -- in
 21 terms of blasting?

22 A. Well, when we choose to hire an outside
 23 consultant or blaster in a -- for instance, in the
 24 case of Dyno Nobel, what happens is they come in and
 25 they assess the situation, they look at the site and

Page 20

1 they lay out the shot --

2 Q. Now, what do you mean by lay out the shot?

3 A. By lay out the shot, I mean they mark
 4 physically with paint on the ground where to drill
 5 the holes. The shot pattern is what we call it. And
 6 then from that point on our drillers drill exactly
 7 the elevation and at the exact location of each hole.
 8 So they drill the holes for the shot, and that is the
 9 only responsibility that we have with the shot
 10 loading process. Dyno will then come in and will
 11 load the shot and will perform all duties through
 12 detonating the shot, including monitoring also.

13 Q. Has your company ever blasted near utility
 14 pipelines in any of your quarries?

15 A. We've blasted regularly near, you know, just
 16 normal residential water lines and sewer lines. We
 17 do have an instance at our Ashley quarry where we've
 18 actually been within 4 or 500 feet of a natural gas
 19 line that is on an adjacent piece of property.

20 Q. And you're blasting there on a regular
 21 basis, I assume?

22 A. Right.

23 Q. And are you personally aware of just -- and
 24 I mean personally aware of other quarries in Missouri
 25 that blast near utility lines or gas lines or

Page 21

1 pipelines?

2 A. Myself personally, I'm aware of -- there's a
 3 quarry in Lodi, Missouri, I believe owned by Delta
 4 Companies, that they're currently blasting within 150
 5 to 170 feet of a high pressure gas line. They are
 6 actually blasting beneath the elevation of the line.

7 Q. And what do you mean by that?

8 A. Well, if the line was at zero elevation, at,
 9 say, the -- if the line was -- I don't know how to
 10 describe it for the reporter, but if they are
 11 blasting beneath the line --

12 Q. And not directly beneath it but --

13 A. No. Beneath the elevation. If the
 14 elevation was 6 foot, then they're at zero. They are
 15 blasting below the elevation of the line.

16 Q. So the shock waves would then go upwards as
 17 it approached the line they're blasting near?

18 MR. MAUER: Objection. Leading, your
 19 Honor.

20 A. Right.

21 HEARING OFFICER: Overruled.

22 Q. (By Mr. Brownlee) In addition to Lodi?

23 A. In addition to Lodi, there is a quarry at
 24 St. Genevieve that's owned by Tower Rock, and they
 25 have a 22-inch line and a 26-inch line that is a

6 (Pages 18 to 21)

1 natural gas line in --
 2 MR. MAUER: Your Honor, may I just
 3 entertain an objection for hearsay? I don't think
 4 there's been foundation established on how this
 5 witness knows these things, if he's personally
 6 observed them or if this is just something he's been
 7 told.

8 HEARING OFFICER: Mr. Brownlee, lay a
 9 foundation, please.

10 Q. (By Mr. Brownlee) Just describe your
 11 personal knowledge.

12 A. I've had contact with people that have been
 13 in that quarry of Dyno Nobel.

14 MR. MAUER: Objection. Hearsay then,
 15 your Honor.

16 HEARING OFFICER: For purposes of
 17 this hearing, this witness is recognized by the
 18 Hearing Officer as an expert in matters that he's
 19 testifying to, and an expert may rely upon hearsay
 20 information from other sources which are demonstrated
 21 by the testimony to -- shown to be generally
 22 knowledgeable on the subject to which he is
 23 testifying. Therefore, the hearsay objection is
 24 noted for the record and is overruled.

25 MR. MCGOVERN: Just so I understand,

1 he's being deemed an expert for what purpose right
 2 now?

3 HEARING OFFICER: Testifying relative
 4 to --

5 MR. MCGOVERN: Blasting?

6 HEARING OFFICER: -- these matters of
 7 blasting in relation to the operation of Magruder, as
 8 well as these other facilities that we're going to
 9 lay further foundation as far as his knowledge.

10 MR. MCGOVERN: Thank you.

11 Q. (By Mr. Brownlee) Go ahead.

12 A. Okay. I went through Lodi. The Tower Rock
 13 quarry at St. Genevieve had the 22 and 26-inch lines
 14 that they -- they have previously shot within 60 feet
 15 of those lines, and they're currently somewhere
 16 around 150 feet at a different location on those
 17 lines.

18 Q. Is Tower Rock Stone the largest quarry in
 19 the state, do you know?

20 A. I do not.

21 Q. It's owned by Luhr Construction?

22 A. Yes. And I've actually got more, too.

23 Q. Okay.

24 A. Capital Quarries, they currently blast next
 25 to sewer lines and water lines.

1 Q. Where are they located?

2 A. They're located here in Jeff City.

3 Q. And is that the site out on Stadium and
 4 Missouri Boulevard?

5 A. Correct.

6 Q. Are there any other businesses within a
 7 stone's throw of that quarry?

8 A. Yeah. You can look on an aerial map and see
 9 there's Wal-Mart and some other retail stores very,
 10 very close.

11 Q. Knowles?

12 A. Yes.

13 Q. Do you know what's across the street from
 14 the quarry in terms of medical?

15 A. Hospital.

16 Q. Yeah.

17 A. Then there's -- that's for lines. Now, as
 18 far as utilities -- you asked utilities, correct, in
 19 general?

20 Q. (Nods.)

21 A. Lake Ozark Sand & Gravel --

22 Q. Where are they located?

23 A. They're located four, five miles east of our
 24 proposed site.

25 Q. They're on Highway 54?

1 A. On Highway 54.

2 Q. Between Jefferson City and the Lake Ozark
 3 area?

4 A. Correct.

5 HEARING OFFICER: Mr. Brownlee,
 6 excuse me just a moment. Just so we've got -- I
 7 think I have an understanding of what you mean by
 8 utilities, but Mr. McDonald, will you --

9 MR. BROWNLEE: I'm going to fill it
 10 in.

11 A. I'm going to describe it. This particular
 12 site Lake Ozark Sand & Gravel, I've been in it
 13 myself, I've seen it firsthand, but you can also see
 14 it as you drive by on Highway 54. When I talk about
 15 these utilities, they are overhead power lines
 16 similar to what are on our proposed site, and they
 17 have actually blasted through the easement underneath
 18 them and have left the poles on a peninsula, so to
 19 speak, with access for a truck to access the pole
 20 itself. But if you're visually to look at it, the
 21 pole is sitting, you know, give or take 60, 80 feet
 22 up in the air on this section of rock just accessible
 23 by a truck. That's -- right now that's what I can
 24 think of.

25 Q. (By Mr. Brownlee) Turning to the issue of

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1 the permit process, during your experience with
2 Magruder, how many permits do you think you've worked
3 on? And I'm not just speaking of Land Reclamation,
4 I'll get to that in a minute, but --

5 A. Permits in general, I'm not going to try to
6 narrow it down, probably somewhere between 50 and
7 100.

8 Q. What type of permits are these?

9 A. I've worked on land reclamation permits like
10 the one we're working on now, renewal permits,
11 expansion permits, amendments. I've worked on with
12 the Air Pollution Control Program construction
13 permits, De minimis level permits, no permit
14 required, like-for-like permits, equipment
15 replacement, water discharge permits, operating
16 permits, EIQ's, hereto, you know, et cetera.

17 Q. And these are all, I assume, with Missouri
18 Department of Natural Resources?

19 A. Correct.

20 Q. And are you familiar with the staff in most
21 of these programs?

22 A. A few are EPA, but yes, I am very familiar
23 with the staff in the programs.

24 Q. And this is a general question. Could you
25 kind of just describe the general permit process in

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1 terms of the back and forth or -- I mean, the
2 discussions that occur? And, again, this is generic
3 discussion.

4 A. Right. Generic? With any permit that I
5 fill out, if I feel there is a need for a question or
6 if I feel that I may be a little unsure of the exact
7 process, I have always called or made conversation
8 back and forth with the department I'm dealing with.
9 And not just the Land Reclamation Department but Air
10 Pollution Control Program, too, because there's
11 changes that go into effect that I want to be aware
12 of, and I just want to be assured that what I'm doing
13 is 100 percent complete.

14 Q. And to go again in a generic area, you
15 recognize that in some of those permits there's a
16 public notice requirement, correct?

17 A. Right.

18 Q. And do you know how many of those permits,
19 aside from Land Reclamation, have any publish notice
20 requirements?

21 A. None of the permits I listed.

22 Q. Okay. And again generically, what's your
23 idea as the purpose of a public notice?

24 A. Well, there's two main purposes of public
25 notice, and they are to notify the public of a piece

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1 of land or a mine site in a specific location and of
2 a specific size.

3 Q. So -- and let me ask you, then, on this
4 particular application, again away from generic, if
5 you would have included the easements that we've
6 heard everyone discuss under the Land Reclamation
7 notice provisions, would those locations or existence
8 of those easements have gone out to the public in the
9 public notice?

10 MR. MCGOVERN: Object as to vague and
11 ambiguous. Are you asking in terms of the
12 application or in the notice itself? It was also a
13 compound question.

14 MR. BROWNEE: In the notice itself.

15 MR. MCGOVERN: Then I'll withdraw the
16 objection.

17 HEARING OFFICER: Thank you.

18 A. In the notice itself maps are not published.

19 Q. (By Mr. Brownlee) So if a person wanted to
20 come in and really see about easements or something
21 else, they would have to come to Land Reclamation or
22 request a Sunshine request, correct?

23 A. That's correct.

24 Q. And, again, a generic, on the bonding
25 discussion, what is -- what's the purpose of bonding?

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1 A. Bonding is basically an insurance policy for
2 the Land Reclamation Department that reclamation will
3 take place in the fact of -- in the case of an
4 operator being deficient or going bankrupt. It's a
5 guarantee that affected land will be reclaimed.

6 Q. And regarding -- when you do one of your
7 permits where a bond's required, do you normally
8 start with a certain bonded area in terms of size?

9 A. Normally, no. We bond smaller sections, for
10 instance, because of the expense of the bond.

11 Q. And could you explain that?

12 A. Well, bonding is expensive, and there's no
13 reason for us to have the entire piece of property
14 bonded until the point that we -- first of all, we
15 receive the -- we get granted the permit, and second
16 of all until we move in and physically start mining
17 or excavating. If we were to get a permit granted
18 and decide, well, we don't want to move in for a year
19 or two, then I'm not going to go out and spend the
20 money to bond the entire number of acres because of
21 the expense just because. So it's very standard
22 procedure for myself to bond a minimum number of
23 acres. You know, in a lot of cases it's 10 acres.

24 Q. And, in fact, did you do that in this
25 particular case?

8 (Pages 26 to 29)

1 A. Yes.

2 Q. Turning to the application and the actual
3 site selection, why did you choose this location in
4 Miller County for the potential quarry site?

5 A. There's several reasons that we chose this
6 site. The quality of the rock is very good at this
7 site.

8 Q. And what do you mean by that?

9 A. There's locations down there that have poor
10 quality rock. The quality of rock at this site is
11 the lower and upper Gasconade Dolomite. It has -- it
12 has a high inherent moisture content and it crushes
13 very granular. And it's been proven to be used in
14 asphalt and other instances like that, but there's
15 two big benefits outside of the quality itself being
16 good, but --

17 Q. Well, let me ask you -- let me stop you a
18 minute there. When it crushes granular, what do you
19 mean by -- what's the significance of that?

20 A. Well, when I say it crushes granular, this
21 rock when crushed does not produce the amount of
22 fines, or as a lay person calls it dust, does not
23 produce the amount of dust that the majority of our
24 other quarries produce.

25 Q. And is that dust significant in terms of

1 adherence like if you're doing asphaltic work?

2 A. It's significant in the fact that fines or
3 dust is sometimes considered a waste product at
4 quarries and we try to produce very little of it. So
5 that was a big thing. And another significance is
6 that the less fines or dust you produce that there's
7 a less chance that there's going to be emissions
8 emitted. And I know this site had a high inherent
9 moisture content, and the significance of that also
10 makes it very, very easy to control emissions.

11 But to get back to your question on why we
12 chose this site, the quality was there, the quantity
13 was there. There's a large quantity of rock on this
14 site and there's a large number of acres. This site
15 was for sale when we first found it. The location is
16 great for access to Highway 54, and I think as most
17 of you all know, there's going to be a 54 Expressway
18 come through there that's going to be tied into a
19 horseshoe bend extension.

20 Q. Are you all -- do you have any type of
21 contractual relationship on that Highway 54
22 relocation project?

23 A. We're a material supplier of the 54 project.

24 Q. To whom?

25 A. To Lake Asphalt Paving & Construction.

1 Q. And that's a separate entity entirely from
2 Magruder?

3 A. Absolutely. And there's still some more
4 reasons why we chose it, too.

5 Q. What about just the growth? Is the Lake
6 Ozark and your -- Lake Ozark area a growth area for
7 the State?

8 A. Yes. Along with this -- these new
9 interchange and the 54 Expressway, the growth is
10 going to be very, very significant. And that's the
11 reason we wanted to be in that area.

12 Q. Did any -- was there any consideration given
13 to the potential post-land use?

14 A. Yeah. We... With the sewer plant being
15 there, it was actually a pro in our mind to have that
16 there for post-mine land use and development.

17 Q. What do you mean it was a pro in your mind?

18 A. Well, if we're going to have development and
19 we're going to need a sewer hook-up, we knew that
20 sewer was in that area and was going to be easily
21 accessible.

22 Q. Did you perform any surveys or rock studies
23 in the decision to purchase -- in your decision to
24 purchase this site?

25 A. Yeah. We --

1 Q. And, again, by we, if there's anyone else
2 involved, I mean, you say "we." You mean Magruder?

3 A. Right. I'm using we as Magruder Limestone.

4 Q. Okay.

5 A. I can say I, but we had two State -- two
6 retired State geologists that worked in conjunction
7 with us. We had topographical maps, we had
8 quadrangle maps that showed geology in formations.
9 Once we established that all that lined up on this
10 piece of property and that the rock was there and
11 that there was a very, very small amount, if any, of
12 a formation called rubidiu that is unusable, we went
13 the next step farther and core drilled with the two
14 retired State geologists being present to look at the
15 rock.

16 Q. And you've described the quality of rock.
17 Is that a typical type rock in that Lake Ozark area?

18 A. It is -- I don't know if typical is the
19 right word. It's the same rock that is at our
20 Sunrise Beach location. And yes, that rock is
21 available in other -- maybe in other locations, but
22 it's not accessible. That's what really caught our
23 eye on this particular site.

24 Q. You mentioned the Sunrise Beach location.
25 Is there a -- economically, while the rock's the

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1 same, is that feasible to use on, like, the Highway
 2 54 project, in your view?
 3 A. Economically?
 4 Q. Yeah.
 5 A. Absolutely not. Not --
 6 Q. What's the reason?
 7 A. Well, with \$4 diesel and you're traveling
 8 17 miles, if you were to haul the rock from Sunrise
 9 Beach and cross the toll bridge twice and then return
 10 empty, it's just -- it's not economical for us to do
 11 that.
 12 Q. What's a dump truck getting in fuel mileage,
 13 if you know?
 14 A. Three, four -- four miles per gallon.
 15 Q. And that's at \$4 price for diesel fuel?
 16 A. Correct.
 17 Q. And when you -- well, you've already
 18 testified when you selected this site you were
 19 obviously aware of the sewer line and sewer plant,
 20 correct?
 21 A. Yes.
 22 Q. And were aware of the easement by Ameren?
 23 A. Yes.
 24 MR. BROWNLEE: I'm going to hand you
 25 at this time, your Honor, MP-5, which is the original

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1 application process, if everybody can get there for a
 2 minute.
 3 HEARING OFFICER: MP-5?
 4 MR. BROWNLEE: Yep. Do you need this
 5 one here or -- you've been handing it over to the
 6 witness.
 7 HEARING OFFICER: I'll be happy to
 8 let the witness use it.
 9 THE WITNESS: I'll give it back to
 10 you.
 11 HEARING OFFICER: You certainly will.
 12 Q. (By Mr. Brownlee) I'll ask if you can
 13 identify that document, please.
 14 A. Yeah. It's the original application that I
 15 sent in.
 16 Q. And does it have a dated cover letter?
 17 A. April 18th, 2007.
 18 Q. And the cover letter is addressed to whom?
 19 A. The cover letter is addressed to Land
 20 Reclamation Program, attention Andy Reid.
 21 Q. And does it explain a relationship to Eolia
 22 Development in that cover letter?
 23 A. Yeah. It states, "Eolia Development is one
 24 of our companies. We, Magruder Limestone, will be
 25 leasing the mining rights from them."

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1 Q. So it's explained at least there. Now, if
 2 you could, prior to filing the document marked MP-5,
 3 did you have discussions with LRC regarding this
 4 particular location?
 5 A. Yes. As with most cases, I filled the
 6 application out. We had phone conversations back and
 7 forth. And I've actually -- I actually faxed the
 8 permit in just, like, for a preliminary look over it
 9 and tell me if there's anything wrong and send it
 10 back to me.
 11 Q. And who were you dealing with at the Land
 12 Reclamation Program, I mean, if you can recall?
 13 A. At the very beginning, you know, I recall it
 14 was mostly with Andy Reid, but I can't say I
 15 didn't -- that I didn't talk to the rest of them
 16 either. You know, usually whoever answers the phone,
 17 and if someone was gone, I would talk to the other
 18 person.
 19 Q. And if you'll turn to the first page, that
 20 just generally indicates the applicant and the
 21 acreage and the location, correct?
 22 A. Correct.
 23 Q. And the second page on site information, who
 24 did you indicate owned the land?
 25 A. On the site information, I indicated that

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1 Eolia Development owned the land.
 2 Q. And who -- again, could you explain, who's
 3 Eolia Development?
 4 A. Eolia Development is owned by Mark Magruder
 5 who also has an ownership of Magruder Limestone.
 6 Q. Is it solely owned by Mr. Magruder, do you
 7 know?
 8 A. Yes.
 9 Q. And who did you indicate owned the mineral
 10 rights on that Page 4?
 11 A. I indicated that Magruder Limestone Company
 12 owned the mineral rights.
 13 Q. And did you indicate regarding the leasing
 14 issue we've discussed about?
 15 A. Yeah. I just wrote a note, which I didn't
 16 have to, but I wrote a note saying that we are
 17 leasing from Eolia Development, stating that we are
 18 going to have a lease or implying that we are going
 19 to have a lease with Eolia Development at some point
 20 prior to the application being granted. And this had
 21 been discussed with and amongst us verbally.
 22 Q. In amongst whom?
 23 A. Myself and Mark.
 24 Q. Mark Magruder?
 25 A. Right.

10 (Pages 34 to 37)

<p style="text-align: right;">Page 38</p> <p>1 Q. And when you say, "We are leasing from Eolia 2 Development," was that saying that there was 3 presently a lease or that we are leasing? 4 MR. MAUER: Objection. Leading, your 5 Honor. 6 HEARING OFFICER: Pardon? 7 MR. MAUER: Leading. 8 HEARING OFFICER: Rephrase your 9 question, Mr. Brownlee. 10 Q. (By Mr. Brownlee) Can you explain what you 11 mean by the statement that you wrote on the paper, 12 which again is one you didn't have to put on in the 13 first place? 14 A. I could have just marked lease. I just 15 wanted to explain, and what I meant was we will be 16 having a lease with Eolia Development. I just wanted 17 to make it very clear to them how it was going to be, 18 and I don't think there was any question about it. 19 Q. Now, turning to the page dealing with -- 20 Page 3 dealing with the bonding, do you have that, 21 which is actually -- yeah, that's Page 3. 22 MR. MCGOVERN: Just so the record is 23 clear, not to interrupt you, Richard, but my 3 is the 24 site information. My 2 on the document we got 25 yesterday, just so the record is clear, is the</p>	<p style="text-align: right;">Page 40</p> <p>1 under one Land Reclamation permit. 2 Q. And that number is? 3 A. 0086. An expansion is just an expansion of 4 that permit. A new Land Reclamation permit would be 5 just that, a new permit, new number. 6 Q. And if it were a new permit, does it have 7 additional information not contained in this 8 particular application for company history, more 9 detailed bonding information? 10 A. Right now I can't answer that. 11 Q. Okay. So you listed 10 acres; is that 12 correct? 13 A. That is correct. 14 Q. We're going to... Okay. I'll come back to 15 that. Let me go back and catch something on this 16 lease issue, too. If and when this permit is 17 granted, would Magruder be willing to file a lease 18 with the Land Reclamation Commission. 19 A. Absolutely. I don't think it's normally 20 required, but we'd be more than willing and happy to 21 file a lease with the Land Reclamation Commission. 22 Q. But it's not required by law? 23 A. No. 24 Q. And if you'll turn to the issue again of 25 bonding, when you filed the original map, did you</p>
<p style="text-align: right;">Page 39</p> <p>1 bonding information. 2 MR. BROWNEE: Okay. Well, let me 3 just not refer to the page. It might be out of 4 order. I'm sorry. I appreciate it. 5 Q. (By Mr. Brownlee) Turning to the page on 6 the application dealing with the bonding? 7 A. Sure. I'm here. 8 Q. And does that -- could you just briefly 9 explain that, how many acres are included? 10 A. Well, I bonded 10 acres out of the 205. 11 Q. And down at the bottom you say, "We're 12 bonding with JD" -- is it Cutter? 13 A. Cutter. 14 Q. And who are they? 15 A. They are our insurance group that takes care 16 of our land reclamation bonding. You know, just once 17 again indicating to them that we are bonding through 18 our own insurance company -- or through a -- through 19 our subbed insurance company. 20 Q. And this application is technically called 21 an expansion, is it not? 22 A. That is correct. 23 Q. And can you explain for the record what that 24 means, as opposed to a brand new application? 25 A. Well, an expansion is that -- we operate</p>	<p style="text-align: right;">Page 41</p> <p>1 indicate on the detail map the 10-acre area? 2 A. I did. And it's -- 3 Q. Where did you have it located? 4 A. I had it located very near the sewer line. 5 Q. And is that where you ever intended to start 6 mining? 7 A. No. That was kind of a -- bonding is kind 8 of an arbitrary issue. No, I did not intend to mine 9 there. In fact, I made it very, very clear in the 10 mining plan turned in exactly where I wanted to bond 11 at -- or where I wanted to start mining at. 12 Q. And can you draw the attention -- or can you 13 direct us to where you stated that in the 14 application? 15 A. If you look on the mine plan, D, Pit 16 Information. 17 Q. Okay. 18 A. And I'll read it, if that's all right. 19 Q. Sure. 20 A. It says, "We are not necessarily creating a 21 pit. We are actually leveling the ground by removing 22 hills. We will start the pit, and in quotations, 23 near the west edge of the property and work the hill 24 towards the south. An exact location for starting 25 place would be the second hill over from the west</p>

1 edge of the property and about one halfway in the
2 length of the hill."

3 Q. So that's completely on -- almost on the
4 other side, the west side of the property from the
5 line, correct?

6 A. It -- yes. Correct.

7 Q. And at the site visit, that's the valley
8 that runs up with the pipeline being across the hill
9 on the other side of the hogback?

10 A. Correct. Correct.

11 MR. MAUER: Leading, your Honor.

12 HEARING OFFICER: Mr. Brownlee,
13 rephrase your question, please. Try to avoid leading
14 the witness.

15 MR. BROWNLEE: Okay.

16 Q. (By Mr. Brownlee) Explain where the actual
17 location is going to be for the start of mining as
18 compared to where the pipeline is located.

19 A. The start of mining is if you were standing
20 on the pipeline, you would have to go west over the
21 top of the hill into the valley where we parked our
22 vehicles at the day we were down there and where we
23 had pointed out that we were going to start. As per
24 our mine plan or our blasting plan, it's that
25 location. It's several hundred feet, if not more,

1 away from the pipeline.

2 Q. And you indicated that on the actual
3 application, as opposed to just where the drawing was
4 on the map?

5 A. Yes, I did.

6 Q. The 10 acres -- and I believe, again, if
7 you'll turn to the map -- and this is the detail map
8 which is attached to MP-5.

9 A. Okay.

10 Q. Could you just for the record again describe
11 that map in terms of what it shows overall in terms
12 of acreage?

13 A. Well, the overall acreage clearly shown is
14 205 acres in our mine plan acreage.

15 Q. How many total acres are in the site?

16 A. Total acres in the site, 212.

17 Q. Okay. And there's been discussed a 50-foot
18 set-back, correct?

19 A. Correct.

20 Q. And can you tell me why you did the 50-foot
21 set-back?

22 A. Well, first of all, it's perfectly legal to
23 set it back 50 feet. There are some reasons that we
24 did it. This... And let me, I guess, give you some
25 history. On most of our quarries, we have an excess

1 of overburden to remove and we need a place to
2 stockpile that overburden that will not be in the
3 way, will not have to be removed and moved again, so
4 normal -- in a normal -- or in another quarry
5 situation we have stockpiled the overburden in the
6 outside perimeters of our boundary. Therefore --

7 Q. And what is overburden, just for the record?

8 A. Overburden is the dirt -- the material that
9 you have to take off before you get down to quality
10 rock that's usable. So we have excess amounts in our
11 other quarries and we've piled that around the
12 exterior perimeter of our areas to get rid of the
13 overburden so we don't have to move it again. In
14 order to do that, you have to have that area
15 permitted and bonded. In this particular situation,
16 there's not any excess material that won't be used in
17 the valleys. What little material, overburden, is
18 used or that we have will be used for our plant site,
19 our stockpile site and for leveling areas off in the
20 valley. So it was not necessary that we needed the
21 outside 50 feet for overburden stockpile. And as
22 typical, reclamation rules change. When you mine
23 within 50 feet of a property boundary, your Land
24 Reclamation rules change.

25 Q. In what way?

1 A. It's on the -- it's a formula that's figured
2 for your slope requirements in such -- for instance,
3 if you stay within 50 feet or plus -- and normally we
4 will stay -- and in this case, too, we will probably
5 not mine within 60 feet of the property boundary, and
6 in order to reclaim, you will have to build a berm, a
7 small berm, around the outside of that high wall. So
8 in this case we didn't need overburden stockpile
9 room, and we never mine within 50 or 60 feet of the
10 outside anyway.

11 And there's another key feature here, too,
12 in that this site is very dense with trees, and since
13 we didn't need the space, we could leave that 50-foot
14 buffer as a cosmetic attraction by having trees
15 around our property line. In fact, from Wood River
16 Road you will not be able to see where our plant
17 sitting.

18 Q. So the buffer there, even though it might be
19 50 feet, the distance of trees will be what --

20 A. Right. We have a -- I mean, pretty much as
21 a guarantee to the public, we cannot touch within
22 50 feet of our property line. And, you know, in
23 reality, there's 500 feet of trees that we have no
24 intention of removing either. So you can visibly not
25 see our plant down in the valley.

1 Q. Regarding the discussion that's been had
2 about the 50 feet not requiring notice to adjacent
3 landowners, when you did the 50-foot set-back, was
4 that an issue that you considered?

5 A. I think we -- yeah, we've beat on this, and
6 to say that I considered it, I knew about it and I
7 knew of the rule. And in the past -- in the past it
8 had been very, very difficult to locate adjacent
9 landowners. It required going to the Assessor's
10 office and spending hours digging through files to
11 locate adjacent landowners.

12 Q. Is that because of title problems, people
13 may not record, or what do you mean it's been a
14 problem?

15 A. Well, it's time-consuming, for one thing,
16 and then if there is a -- if you make a mistake, then
17 it disqualifies your public notice. You know, in
18 this instance there are no requirements to notify
19 anybody outside your mine plan boundary because the
20 boundary is us. That's where your public notice
21 takes over.

22 Q. Turn, if you would, to the page of the
23 permit dealing with post-mine land use. And I
24 can't...

25 A. I've got it.

1 Q. Do you have that?

2 A. Yeah.

3 Q. That's the page that starts at the top
4 Grading, correct?

5 A. Right.

6 Q. You were here yesterday. You heard
7 testimony from the Department that this page they
8 felt was incomplete. Do you agree with that?

9 A. No, I absolutely do not agree with that.
10 And they were concerned about a different issue.

11 Q. The map, I guess, is incomplete?

12 A. Right.

13 Q. Tell me about -- on the post-mine land use
14 issue, what did you indicate on this page we're
15 looking at as to what you were going to -- what
16 Magruder intended to do?

17 A. Well, I indicated in two areas, actually.
18 On B of Grading, I just simply stated that "The
19 reclaimed topography will most likely be used for
20 commercial development. We have created a large,
21 flat area that would be great for business. Any
22 existing slopes will be graded 3 to 1."

23 And then also on Item D, Use of Land When
24 Reclaimed, I wrote in "205 acres as development which
25 includes residential, industrial and recreational."

1 And that's significant because 205 acres is the
2 entire mine plan area. I didn't break it down 50
3 acres wildlife, 50 acres agricultural, 30 acres water
4 impoundment. And this is where on the mapping
5 requirements if I've labeled it as 205 acres mine
6 plan, that is essentially 100 percent of the
7 post-mine land use, too, is the same, so --

8 Q. What could you have put on that map that
9 would have shown any more information than was here?

10 A. In this instance there's nothing more I
11 could have put on the map. If, for instance, I would
12 have put an 80-acre lake on it surrounded by
13 apartments, so there would have been two different
14 post-mine land uses, then I would have had to
15 differentiate between an 80-acre water impoundment
16 area. So I would have drew an 80-acre water
17 impoundment and then indicated the rest was
18 development or residential use, but in this instance
19 it's not the case.

20 Q. So the map, if you'd have intended an
21 80-acre lake as part of the post-mine land use, that
22 would have been something you could have put on a
23 map?

24 A. Correct.

25 Q. But anything that you were going to do --

1 was there anything you could put on the map?

2 A. No. I mean, it was sent in and it was
3 deemed complete twice after this information was sent
4 in.

5 MR. BROWNLEE: Can we go and take
6 just a -- we're moving along pretty good. Can we
7 take ten minutes?

8 HEARING OFFICER: Sure. Let's take a
9 ten-minute recess and come back at ten after. We're
10 off the record.

11 (Brief recess.)

12 HEARING OFFICER: All right. We're
13 back on the record. Mr. Brownlee, proceed whenever
14 you're ready.

15 MR. BROWNLEE: Okay.

16 Q. (By Mr. Brownlee) We just talked about the
17 post-mine land use, I believe. If you'll turn again
18 to the application and in particular to the two maps
19 attached thereto, and the first map is -- what would
20 you describe that as?

21 A. The first map is just a site map. It's a
22 locator map.

23 Q. Okay. And you've marked the approximate
24 mine plan area with crosshatching, correct?

25 A. Correct.

<p style="text-align: right;">Page 50</p> <p>1 Q. And if you'll turn to the second map, what 2 is that map? 3 A. This is a detail map that details the 4 property boundary, the mine plan area and additional 5 information. 6 Q. And you're aware of the issue and criticism 7 that the second detailed map does not include the 8 sewer line easement or the Ameren easement, are you 9 not, sir? 10 A. Yeah, I'm correct -- I'm aware of that, 11 correct. 12 Q. And if you could, would you turn to 13 Applicant's Exhibit -- I believe it's Exhibit 2, 14 which is the regulations that deal with these maps? 15 HEARING OFFICER: Applicant's 2. The 16 witness is being handed a copy of that. 17 Q. (By Mr. Brownlee) And in particular, we're 18 dealing with 10 CSR 40-10.020(2)(E)? 19 A. Correct. 20 Q. Do you have that? That's Page 4 of that? 21 A. Yes. 22 MR. BROWNLEE: And everybody's on 23 that page? 24 Q. (By Mr. Brownlee) When you prepared this 25 application, were you aware of that regulation?</p>	<p style="text-align: right;">Page 52</p> <p>1 it has to show ownership. 2 Q. And did either of those easements show 3 ownership? 4 A. No. 5 Q. So under that provision, you did not include 6 it because neither of the easements showed ownership? 7 A. That's correct. 8 Q. And if you'll go on to the explanation of 9 what the regulation states. 10 A. Right. It further explains, "Including 11 owners or leaseholders of the land and utilities, as 12 well as the names of all record landowners of the 13 real property located contiguous or adjacent to the 14 total mine plan area." 15 Q. And how did you interpret that? 16 A. It's very, very clear. It says, "Including 17 owners or leaseholders," so neither one of them was 18 an owner and neither easementholder was a 19 leaseholder. Then it says, "Of the land and 20 utilities." So it's implying that you have to own or 21 lease the land and the utilities, not or, one or the 22 other. And it's fairly -- very clearly written. 23 Q. And neither of the easementholders hold a 24 lease on the land, do they? 25 A. That is correct.</p>
<p style="text-align: right;">Page 51</p> <p>1 A. Yes. 2 Q. And if you would -- and, again, we've been 3 through this, but to make the record, would you read 4 Paragraph E -- well, let me rephrase that. Paragraph 5 E(1) talks about that that's the location map that 6 we've just referred to, correct? 7 A. Correct. 8 Q. And Paragraph E(2), what is that map? 9 A. It's the detail map. 10 Q. And that's the one we're looking at and 11 discussing right now? 12 A. Correct. 13 Q. And that's the one you did not include 14 either easement on, correct? 15 A. Correct. 16 Q. Now, would you read that -- the first part 17 of that, if you could, into the record, please? 18 A. This is E(2)(a). It says, "The names of any 19 persons or business having any surface or subsurface 20 interest in the lands to be mined." 21 Q. Okay. Now, in your opinion -- and, again, 22 you're not an attorney -- how did you interpret that 23 as the Applicant? 24 A. Well, I interpret it the exact same way that 25 I believe Larry Coen interprets it, and that is that</p>	<p style="text-align: right;">Page 53</p> <p>1 MR. MAUER: Objection. Lack of 2 foundation and leading. 3 A. I think I stated it anyway. 4 MR. BROWNLEE: Yeah, I think you did. 5 HEARING OFFICER: Lack of foundation 6 in that there's no foundation that the -- 7 MR. MAUER: This witness knows the 8 ownership of those easements. That's not been 9 established. 10 Q. (By Mr. Brownlee) Well, in any of your -- 11 MR. MAUER: I'm sorry. I need a 12 ruling on my objection. 13 HEARING OFFICER: All right, I'm 14 going to give you a ruling, Mr. Mauer. 15 MR. MAUER: Thank You. 16 HEARING OFFICER: Your objection is a 17 foundation has not been laid that this witness knows 18 who holds the easements regarding the Ameren UE and 19 the Joint Sewer Board utilities, is your 20 interpretation of this regulation? 21 MR. MAUER: That's not my 22 interpretation of the regulation. I believe the 23 question, in a leading fashion, was "and they didn't 24 own or lease," and I don't think there's a foundation 25 that this witness as of yet knows about the ownership</p>

14 (Pages 50 to 53)

1 or leasing of those easements. It hasn't been
2 established. He hasn't talked about reviewing any of
3 the easements. I don't think that's been established
4 yet. Lack of foundation and knowledge of this
5 witness.

6 HEARING OFFICER: Objection is
7 sustained.

8 Q. (By Mr. Brownlee) In purchasing -- in the
9 Magruder or Eolia purchasing this land, were you able
10 to ever determine if there's any other ownership of
11 the 212 acres except for Magruder?

12 A. Yes. I was able to determine that by our
13 title work.

14 Q. And did you find any other ownership on the
15 212 acres other than now the land owned by Eolia?

16 A. No.

17 Q. Are there any leases indicated on the title
18 work --

19 A. No.

20 Q. -- on that 212 acres? Are the only
21 two pieces that are not owned and -- or that are
22 owned in fee, are they just subject to easements?

23 A. That is correct.

24 Q. If you'll turn now to Applicant's Exhibit 1,
25 please.

1 HEARING OFFICER: Witness is being
2 handed Applicant's Exhibit 1.

3 Q. (By Mr. Brownlee) Can you identify that,
4 please?

5 A. This is the original letter from the Land
6 Reclamation Program from Andrew Reid stating that our
7 application was complete and to proceed with public
8 notice requirements.

9 Q. What's the date of that letter?

10 A. This letter is dated May 21st, 2007.

11 Q. In response to the notification of
12 completeness and public notice, what did you do?

13 A. I sent a letter to the governing body of
14 Miller County, which would be the County
15 Commissioners, and I published a public notice in a
16 newspaper legally qualified to do that.

17 Q. And when you said you published it in a
18 newspaper, what process did you go through to locate
19 the name of that newspaper you selected?

20 A. I became aware that Vernon Publishing was a
21 publisher in Miller County, and I contacted them to
22 describe what we were doing, that I had a public
23 notice, and they informed me that they --

24 MR. MAUER: Objection. Hearsay, your
25 Honor. They informed me. He's about to provide some

1 hearsay testimony about some out-of-court declarant.

2 MR. BROWNLEE: This is a background,
3 your Honor, for how he obtained the paper.

4 HEARING OFFICER: It's a foundational
5 question.

6 MR. BROWNLEE: It's a foundation
7 question. This was not a factual issue as to whether
8 it down --

9 HEARING OFFICER: Mr. Mauer, I
10 understand you want to put as much on the record as
11 possible that will eventually lead to filing
12 reversible error against the Commission, and you have
13 that right and I understand it. I'm really trying to
14 move through this because I guess I see a bigger
15 picture in really trying to determine the very
16 important rights of the landowner and of the Joint
17 Sewer Board in this matter. And we can -- you know,
18 we can play very strict by the rules of evidence, and
19 I think it's only going to prolong and delay it. I
20 consider this a foundational question. There already
21 is sufficient evidence within the record relative to
22 the publication of the notice. This is background
23 information concerning that. And I'm going to
24 overrule the hearsay objection. Proceed, Mr.
25 Brownlee.

1 Q. (By Mr. Brownlee) And Vernon Publishing,
2 whoever they -- did they give you a choice of
3 newspapers that they owned and published in...

4 A. I don't remember the conversation
5 word-for-word, but I described what we were looking
6 for, that we had a public notice to publish and
7 described it to them, and they said, we'll put it in
8 this newspaper, the Miller County Autogram Sentinel.

9 Q. Were you familiar with either of the papers
10 that were down there?

11 A. No.

12 Q. So after you at least selected one
13 particular or chose one paper, did you also give
14 notice to the Miller County Commissioners?

15 A. Yes, I did.

16 Q. And I believe it's on our exhibit list,
17 Applicant's Exhibit 5?

18 MR. BROWNLEE: Do you all have all of
19 those? I assume you do. Steve?

20 MR. MAUER: You bet. Adam sent them
21 all to us. He did a good job.

22 Q. (By Mr. Brownlee) I'm handing you what's
23 been marked Applicant's Exhibit 5 and ask if you can
24 identify that?

25 A. Yeah, I can identify it.

1 Q. What is that?
 2 A. It's the green card that was returned by
 3 Miller County Commissioners stating that they got the
 4 letter.
 5 Q. And I think the full exhibit, there's also a
 6 letter attached which is the certified mail, do you
 7 have that, dated May 11, 2007?
 8 MR. BROWNLEE: Do you all have this?
 9 I don't think it's in here.
 10 HEARING OFFICER: Is it part of the
 11 application?
 12 MR. BROWNLEE: It's part of the
 13 notice. Applicant's 5 should have three pages.
 14 HEARING OFFICER: Yes. I've got a
 15 copy of the green card, front and back.
 16 MR. BROWNLEE: That's it. There we
 17 are.
 18 HEARING OFFICER: The exhibit is
 19 complete. I'm sorry. I didn't realize you were
 20 working off that exhibit. That's Applicant's
 21 Exhibit 5 which has been put into the record.
 22 Q. (By Mr. Brownlee) In addition to the green
 23 card, the certified, is there a letter to the Miller
 24 County Commissioners?
 25 A. Yes, there is.

1 Q. And was that prepared by Magruder dated
 2 May 11, 2007?
 3 A. That is correct.
 4 Q. And is that on the format that was provided
 5 to you by the Missouri Land Reclamation Commission?
 6 A. That is correct.
 7 Q. And is that a letter you copied verbatim
 8 except adapted to your particular facts?
 9 A. Correct.
 10 MR. BROWNLEE: I'm going to offer at
 11 this time, if I haven't, Applicant's 5.
 12 HEARING OFFICER: Applicant's 5 has
 13 not been offered. Any objection to Applicant's 5?
 14 MR. MCGOVERN: No objection.
 15 HEARING OFFICER: Actually, wait a
 16 minute. Roberts testified to that, and it was
 17 received.
 18 MR. MCGOVERN: It's already admitted.
 19 MR. BROWNLEE: The whole thing? All
 20 right.
 21 Q. (By Mr. Brownlee) And, again, regarding the
 22 letter to Miller County Commission, is the quarry
 23 located in Miller County?
 24 A. Yes, it is.
 25 Q. Is it located in any municipality?

1 A. No.
 2 Q. So is that the only -- under Missouri
 3 statute, the notice would go to the County
 4 Commission, correct?
 5 A. That is correct, the governing body.
 6 Q. And that is what's exhibited in the
 7 Applicant's file?
 8 A. Correct.
 9 Q. Now, if you can turn to Applicant's
 10 Exhibit 4, and I ask if you can identify that?
 11 HEARING OFFICER: Applicant's 4?
 12 MR. MCDONALD: Yeah. There it is.
 13 A. Okay, I have it.
 14 Q. (By Mr. Brownlee) I ask if you can identify
 15 that?
 16 A. Yeah, I can identify it. It's the affidavit
 17 of publication in the Miller County Autogram Sentinel
 18 as far as public notice.
 19 Q. And, again, this was the newspaper that was
 20 selected regarding public notice, correct?
 21 A. Correct.
 22 Q. And as far as you know, does this comply
 23 with Missouri law?
 24 A. It does.
 25 MR. BROWNLEE: At this time I'm going

1 to -- was it also introduced? I'm sorry if I missed
 2 that yesterday. I was trying to...
 3 HEARING OFFICER: That's all right.
 4 MR. BROWNLEE: If not, I'm going to
 5 offer Applicant's 4.
 6 MR. MCGOVERN: It was admitted.
 7 HEARING OFFICER: Applicant's 4 is
 8 already in.
 9 MR. BROWNLEE: Okay. Thank you.
 10 Q. (By Mr. Brownlee) After the public notice
 11 was sent out and after you had received completeness
 12 directions from the Department of Land Reclamation,
 13 were you informed of concerns?
 14 A. Yes, I was.
 15 Q. And could you just briefly describe how you
 16 learned of those concerns and what they were?
 17 A. When the concerns came in in letter format,
 18 the Land Reclamation Department -- the concerns went
 19 to them, and then they in return, I believe, faxed
 20 them to me so that I would be aware of them.
 21 Q. And were you requested to have a public
 22 meeting?
 23 A. Yes.
 24 Q. And did you agree to have that meeting?
 25 A. No. We declined.

1 Q. Why?

2 A. It's... We knew that -- we had a good idea
3 that it was going to be inefficient and not get
4 anywhere and just prolong the whole process.

5 Q. Did you, in fact, though, go ahead and meet
6 with anybody with the Joint Sewer Board in a private
7 meeting?

8 A. Yeah. I contacted Penny Lyons.

9 Q. And who is she?

10 A. Penny Lyons is the Mayor of Osage Beach, and
11 she is on the Board of the Lake Ozark/Osage Beach
12 Joint Sewer Board.

13 Q. And did you have a meeting?

14 A. Right. I contacted her, and myself along
15 with Mark Magruder drove down to Lake of the Ozarks
16 to -- excuse me -- to Osage Beach City Hall and met
17 with her; Nick Edelman, the city engineer; and, I
18 believe, Nancy Viselli, and we just tried to address
19 their concerns and, you know, see if we could work
20 together on this project.

21 Q. And was there any resolution after that
22 meeting?

23 A. No, there was no resolution. And when we
24 were walking out the door, there was a comment
25 somewhere along the lines of we'll see you at the

1 hearing.

2 Q. And that's where we are?

3 A. That's where we are.

4 Q. Now, in regard to the proceeding today, we,
5 in fact, in January of 2008 had a site visit; is that
6 correct?

7 A. That's correct.

8 Q. And I think, except for Mr. -- one of the
9 gentlemen here, I think most of us were at that site
10 visit, correct?

11 A. Correct. I think Mr. McGovern was not
12 there.

13 Q. And at the time -- and I can't attribute
14 this to any -- there was discussion about bonding and
15 about the easements. Is that a fair statement?

16 A. There was, seemed to be some confusion.

17 Q. And we walked the site, looked at the sewer
18 plant site, the Hudson Hollow site where we were, the
19 Magruder site, correct?

20 A. That's correct.

21 Q. And as a result of that meeting, did you
22 feel that there was some additional information that
23 you wanted to supply to the -- the Land Reclamation
24 Program but to the parties since we were engaged in a
25 hearing process?

1 A. Yeah. It was evident to me that there was
2 some confusion on the area of bonding, so really to
3 clear up any matter and I guess so that everybody
4 knew that we were focusing on a mine plan, not a
5 bonded area, I went ahead and amended the application
6 and sent in additional bonding, clearing up any
7 misperceptions that we were focusing on only a
8 10-acre quarry; we were actually focusing on a mine
9 plan area. So I simply sent in additional bonding
10 amendment.

11 Q. Okay. And I'll ask you to refer to
12 Applicant's Exhibit 6 and ask if you can identify
13 that, please?

14 HEARING OFFICER: That's actually...
15 I handed you...

16 MR. MCGOVERN: You may have given him
17 my 6.

18 HEARING OFFICER: I gave you Mr.
19 McGovern's copy. Wait just a moment.

20 A. Yeah, I recognize it.

21 Q. (By Mr. Brownlee) And Applicant's Exhibit 6
22 is dated...

23 A. February 5th, 2008.

24 Q. And this occurred -- was sent in after the
25 site visit, correct?

1 A. Correct.

2 Q. And if you'll just review the document,
3 what's the next page after the cover letter?

4 A. The next page after the cover letter is just
5 the permit application for industrial mines, and I
6 marked it the permit amendment, you know, adding 90
7 acres in the Miller County Section 33, Township 40
8 North, Range 15 W -- West.

9 Q. Regarding the -- I believe there were two
10 maps, is that not correct, attached?

11 A. There is only one map attached on this one.

12 Q. Well, that's --

13 HEARING OFFICER: The other, it has
14 been supplemented by the --

15 MR. BROWNLEE: The one with the
16 yellow.

17 HEARING OFFICER: The second map
18 laying on the table.

19 MR. MCDONALD: Oh, I'm sorry.

20 Q. (By Mr. Brownlee) There are two maps
21 attached, are there not?

22 A. Yes.

23 Q. The one with the yellow notation is what?

24 A. The yellow notation simply shows where the
25 bonded area is.

1 Q. Okay. And what's the second map?
 2 A. The second map shows the same thing.
 3 Q. As well as any additional information?
 4 A. Right. There's additional information. The
 5 easements are located on these maps, and a simple
 6 phrase on one of them says, "100 percent development
 7 post-mine land use."
 8 Q. And that's the issue we talked about with
 9 Mr. Zeaman yesterday?
 10 A. Correct.
 11 Q. That you earlier felt wasn't necessary to
 12 put on this map, in your opinion?
 13 MR. MAUER: Leading. I'm sorry. I'm
 14 just making my record.
 15 HEARING OFFICER: Mr. Mauer, state
 16 your objection.
 17 MR. MAUER: It's leading. Mr.
 18 Brownlee is testifying again for the witness.
 19 MR. BROWNLEE: This has all been
 20 testified to about 30 times.
 21 HEARING OFFICER: I understand, Mr.
 22 Brownlee. Try to avoid leading the witness, unduly
 23 influencing the Hearing Officer by leading your
 24 witness.
 25 Q. (By Mr. Brownlee) Why did you put the

1 easements on this map?
 2 A. Well, for two reasons. One, so that
 3 everybody in this party would be aware of it. And I
 4 believe Mitch Roberts asked me to do so.
 5 Q. At that time were you -- did you have any
 6 doubts that the parties were already aware of these
 7 easements?
 8 A. I didn't know. It was just an additional
 9 information that could be put on the maps. You know,
 10 I could have went into greater detail, too, to make
 11 it easier. It's just additional information that I
 12 put on there.
 13 Q. I'm going to turn, if I could, to
 14 Applicant's Exhibit 7.
 15 HEARING OFFICER: Applicant's 7? The
 16 witness has been handed a copy of Applicant's 7.
 17 Q. (By Mr. Brownlee) I'd ask if you can
 18 identify that.
 19 A. Yeah. This is a blast plan that we've
 20 developed for the proposed site.
 21 Q. What generally is the purpose of a blast
 22 plan?
 23 A. You know, a blast plan designates several
 24 items. I'll just touch on a few of them. It
 25 describes the location of where your mining will

1 start, describes elevations, describes fence heights,
 2 describes explosives use, describes the hole diameter
 3 of your drill, stemming height, among various other
 4 information.
 5 Q. Is that -- is this blast plan in any way
 6 required by the Land Reclamation Commission for
 7 purposes of permitting?
 8 A. No.
 9 Q. So why did Magruder prepare this?
 10 A. We prepared this so that, once again,
 11 everyone in this hearing, experts probably more than
 12 others, would be basing their --
 13 Q. You said basing?
 14 A. Would be basing their reports on the same
 15 information. We described accurately how we're going
 16 to mine this site so that they can base their reports
 17 on the information.
 18 Q. Have you used a blast plan at other
 19 quarries?
 20 A. We -- I mean, we always plan our blasts. I
 21 mean, it may not be written down, but every quarry we
 22 plan our blasts.
 23 Q. And who drafted or assisted with drafting
 24 this document?
 25 A. Myself, Ron Twellman.

1 Q. And who is he?
 2 A. Ron Twellman is our production manager.
 3 He's over all the superintendents, foremen, et
 4 cetera, et cetera. Dr. Worsey.
 5 Q. And who is he?
 6 A. He's a -- probably one of the leading
 7 blasting experts, for lack of a better term, in the
 8 world. Keith Henderson.
 9 Q. And who is Mr. Henderson?
 10 A. He is employed with Dyno Nobel, once again
 11 probably one of the top blasters definitely in the
 12 U.S.
 13 Q. Do you know, Mr. Henderson, does he have any
 14 relation to the Missouri Blasting Safety Act?
 15 A. Yeah. Keith Henderson is the interim
 16 chairperson of the Missouri Blasting Safety Act.
 17 Q. Commission?
 18 A. Commission.
 19 Q. Okay. And --
 20 A. We --
 21 Q. Go ahead. I'm sorry.
 22 A. Also, I believe we sent a copy to Larry
 23 Mirabelli just for his approval also.
 24 Q. And who's Mr. Mirabelli?
 25 A. Larry Mirabelli is a blasting expert who's

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1 employed by Dyno Consult, which is a consulting
 2 operation in conjunction with Dyno.
 3 Q. Does he have a specialty, that you know of?
 4 A. Yeah. He specializes in blasting near
 5 pipelines.
 6 Q. And does he do this -- do you know where he
 7 does this work?
 8 A. He does his work all over the U.S., if not
 9 farther.
 10 Q. Do you know whether the blasting plan marked
 11 as Applicant's Exhibit 7 is in any way related to the
 12 Missouri Blasting Safety Act?
 13 A. Well, when we were developing this plan, we
 14 developed it in accordance with the Missouri Blasting
 15 Safety Act.
 16 Q. And without going into great deal, how do
 17 you say you drafted it in compliance with it? In
 18 what areas?
 19 A. Well, the shots that -- I mean, this is an
 20 expert field, but the shots that are proposed and
 21 will be used on this blasting plan, in this blasting
 22 plan, will comply with levels set forth in the
 23 Missouri Blasting Safety Act.
 24 Q. So the Blasting Safety Act does have some
 25 instructional -- or does it have instructional

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1 materials in that act dealing with blasting?
 2 A. Absolutely. It has regulations that deal
 3 with blasting.
 4 Q. It's a licensing provision, too, correct?
 5 A. Correct.
 6 Q. And when you developed this blast plan, did
 7 you look at different sources to -- in order to
 8 produce this document?
 9 A. Well, during the -- yeah. We had several
 10 sources of information as far as --
 11 Q. Could you go ahead and list those, if you
 12 could?
 13 A. One of the sources was just the expertise of
 14 our experts, the experience of the people involved.
 15 And then during the discovery process, we had
 16 requested a lot of specific information for the
 17 pipelines that are of concern in this case, and the
 18 Sewer Board had sent us construction drawings. They
 19 had sent us revised construction drawings. They sent
 20 us -- they had sent us all the information that they
 21 had on the sewer plant and lines.
 22 Q. So in the preparation of this blast plan,
 23 did you consult and review those documents sent to
 24 you by the Joint Sewer Board on the construction of
 25 the sewer plant and the sewer lines?

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1 A. Yeah. I've --
 2 Q. Also... Did you?
 3 A. Yes.
 4 Q. Did you also get materials from the City of
 5 Osage Beach on the sewer line?
 6 A. Yeah. They sent information on backfill
 7 materials, on bedding material.
 8 Q. And did you perform a review of the
 9 materials dealing with the construction as supplied
 10 to you by the Joint Sewer Board and the City of Osage
 11 Beach?
 12 A. Yes.
 13 Q. I'm going to --
 14 MR. BROWNLEE: And this is
 15 Applicant's Exhibit 19.
 16 MR. MCGOVERN: The exhibits that I
 17 was provided before the hearing when they were
 18 delivered, mine go up to 17. Is there --
 19 MR. TROUTWINE: That's what I was
 20 going to say, this is not --
 21 MR. BROWNLEE: This should all have
 22 been provided in discovery.
 23 MR. MCGOVERN: I'm not objecting to
 24 that. I got a packet of documents from your office
 25 that end in 17.

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1 MR. TROUTWINE: Yes.
 2 MR. MCGOVERN: Is that a yes? All I'm
 3 asking, is there an 18 or --
 4 MR. TROUTWINE: This was not in the
 5 original.
 6 MR. MCGOVERN: I understand, but is
 7 there an 18? You're now marking this as Applicant's
 8 19. The exhibits you produced before the hearing
 9 stopped at 17.
 10 MR. BROWNLEE: Maybe we have a wrong
 11 number.
 12 MR. MCGOVERN: I just want to make
 13 sure we don't have a numbering error.
 14 MR. BROWNLEE: I did have an 18, but
 15 I'm going to skip that.
 16 MR. MCGOVERN: Okay.
 17 HEARING OFFICER: All right. This is
 18 Applicant's 19. Do you have a copy?
 19 MR. BROWNLEE: Go ahead and keep that
 20 if you want to review it.
 21 HEARING OFFICER: All right.
 22 Everyone's got a copy. All Counsel have a copy.
 23 Q. (By Mr. Brownlee) I've handed you what's
 24 been marked as Magruder Exhibit 19 or Applicant's
 25 Exhibit 19, and I ask if you can identify that

<p style="text-align: right;">Page 74</p> <p>1 two-page document?</p> <p>2 A. Yeah. It is information on the 18-inch</p> <p>3 sewer line.</p> <p>4 Q. And the first page appears to be a typed</p> <p>5 document from the discovery and what was provided.</p> <p>6 Can you tell me what that page represents?</p> <p>7 A. This page was pulled out of a section of</p> <p>8 contract papers for the 18-inch sewer line, and on</p> <p>9 one particular note here under Blasting --</p> <p>10 MR. MAUER: Your Honor, I'm going to</p> <p>11 object before this witness starts testifying about</p> <p>12 it. The document is not complete. It's not even</p> <p>13 identified as -- other than these handwritten notes</p> <p>14 which haven't been identified by anybody as coming</p> <p>15 from -- where it says, "18-inch pipe improvement" by</p> <p>16 anybody from the Sewer Board or the City of Osage</p> <p>17 Beach that those writings are there. It's an</p> <p>18 incomplete document. It's not even the whole page.</p> <p>19 And if it's been extricated from a document that's</p> <p>20 been produced, then they ought to put the whole</p> <p>21 document in, but I don't know how this witness could</p> <p>22 lay the foundation for that anyway. So I'm objecting</p> <p>23 to the utilization of Applicant's 19 and reading from</p> <p>24 any parts of it without any foundation.</p> <p>25 HEARING OFFICER: Mr. Brownlee, do</p>	<p style="text-align: right;">Page 76</p> <p>1 document?</p> <p>2 MR. TROUTWINE: It's just in a stack.</p> <p>3 MR. BROWNLEE: Maybe subject to -- I</p> <p>4 asked him an identification question in the first</p> <p>5 place, and the objection stopped. I mean, the</p> <p>6 question, if he could... I mean, if he could...</p> <p>7 HEARING OFFICER: Subject to the</p> <p>8 production of Sewer System Improvement Contract No. 1</p> <p>9 in its entirety written by Kirkland & Associates --</p> <p>10 who was this provided from?</p> <p>11 THE WITNESS: The Sewer Board.</p> <p>12 HEARING OFFICER: This was in</p> <p>13 response to discovery?</p> <p>14 MR. BROWNLEE: To discovery, yeah.</p> <p>15 This is their document.</p> <p>16 HEARING OFFICER: From the Sewer</p> <p>17 Board?</p> <p>18 MR. BROWNLEE: To us. It's a page</p> <p>19 out of it.</p> <p>20 HEARING OFFICER: Subject to</p> <p>21 producing the entire document which we will then take</p> <p>22 into the record as Applicant's 19, you are permitted</p> <p>23 to cross-examine the witness relative to these two --</p> <p>24 to examine the witness relative to these two pages.</p> <p>25 Q. (By Mr. Brownlee) Regarding the first page,</p>
<p style="text-align: right;">Page 75</p> <p>1 you have the entirety of the document?</p> <p>2 MR. BROWNLEE: We received 2,000</p> <p>3 pages of documents, and these were two pertinent</p> <p>4 pages supplied by the City of Osage Beach and the</p> <p>5 Joint Sewer Board. I mean, I can bring all 2,000, we</p> <p>6 probably have them here, and we can introduce them</p> <p>7 all and ask him to locate it and pull this page out.</p> <p>8 MR. MCGOVERN: We're not asking that.</p> <p>9 I would like to know what this is. I share in the</p> <p>10 objection only from the standpoint I've got Sections</p> <p>11 2.1 and 3.2 of a document. I have no idea where this</p> <p>12 comes from other than the handwritten note on top, so</p> <p>13 if he can lay the foundation.</p> <p>14 HEARING OFFICER: Do you have the</p> <p>15 remainder, Mr. Brownlee, of Sewer System Improvement</p> <p>16 Contract No. 1 written by Kirkland & Associates?</p> <p>17 MR. BROWNLEE: I'm assuming we do.</p> <p>18 Yes, we do.</p> <p>19 HEARING OFFICER: Let's take a recess</p> <p>20 and let's pull that document, please.</p> <p>21 MR. BROWNLEE: We've got to go back</p> <p>22 to the office.</p> <p>23 HEARING OFFICER: It's at the office?</p> <p>24 MR. TROUTWINE: It's 2,000 pages.</p> <p>25 HEARING OFFICER: It's a 2,000-page</p>	<p style="text-align: right;">Page 77</p> <p>1 the type in particular from Section 210 through 3.2,</p> <p>2 do you know what that document was -- this page was</p> <p>3 taken out of?</p> <p>4 A. It was taken out of the contractual papers</p> <p>5 that they had sent us for the 18-inch sewer line.</p> <p>6 Q. And you say, "contractual papers." Do you</p> <p>7 know what Kirkland Associates is?</p> <p>8 A. They either designed it and monitored it or</p> <p>9 just designed it.</p> <p>10 Q. And is there a section related to blasting?</p> <p>11 A. Yes, there is.</p> <p>12 Q. And in particular, do you want to read that</p> <p>13 section, Blasting?</p> <p>14 A. Yes. Under Section 3.1, Blasting, "Blasting</p> <p>15 will be permitted only after securing the owner's</p> <p>16 approval and only when precautions are taken for</p> <p>17 blasting" -- excuse me -- "only when precautions are</p> <p>18 taken for the protection of persons or property. Any</p> <p>19 damage caused by blasting shall be repaired by the</p> <p>20 contractor at his own expense. No blasting shall be</p> <p>21 attempted within 40 feet of the finished work."</p> <p>22 Q. Now, in terms of 40 feet of the finished</p> <p>23 work, what's the finished work in pipeline</p> <p>24 construction?</p> <p>25 MR. MAUER: Okay. Again I'm going to</p>

20 (Pages 74 to 77)

1 just, your Honor, for my objection, there is nothing
2 in this document that we've been given that
3 identifies finished work, and so if he's now
4 testifying beyond -- certainly now he's even
5 testifying beyond the scope of Applicant's 19. I'm
6 just making my objection for the record.

7 HEARING OFFICER: Subject to the
8 entire document coming in, if it does define finished
9 work, the Hearing Officer will hear this witness on
10 what he perceives to be finished work in the
11 construction of an 18-inch pipeline as delineated in
12 the other part of this document.

13 Q. (By Mr. Brownlee) What's your understanding
14 of the finished work, subject to it being defined?

15 MR. MAUER: Objection. Relevance.

16 HEARING OFFICER: Overruled.

17 A. In a pipeline application, if he was in a
18 construction process and they were constructing the
19 pipeline and they came to a point which required
20 blasting for additional line, then they had to stay
21 40 feet away from the line they had just placed to
22 start blasting the trench for the ongoing line.

23 Q. (By Mr. Brownlee) So it's 40 feet from the
24 end of the finished work?

25 A. That's correct.

1 Q. Now, turning to Page 2 of that document,
2 which again is the 18-inch PVC line, what is the
3 significance of that? And I realize it's a poor
4 copy, but that's what we got.

5 A. This is the construction drawings
6 themselves, and the first significance is that the
7 stationing that is on the bottom of this page --

8 Q. What do you mean by stationing?

9 A. Stationing is a form of measurement that is
10 used on construction drawings as far as -- a station
11 is 100 feet. It is very common on construction
12 drawings to use stations instead of other forms of
13 measurement. The first thing to note is that this is
14 indeed the stationing out of our property boundaries.
15 You're looking at the existing 18-inch forced main
16 line that goes through our property.

17 Q. Okay.

18 A. The second thing to note is that this was a
19 document drawn up by KAC Kirkwood & Associates
20 Business Consultants, Kansas City, Missouri, in
21 conjunction with City of Osage Beach sewer system
22 improvements. And the first date on here...

23 THE WITNESS: Can I look at yours?

24 A. You can see the first date is 12/6/85, then
25 it says, Revised according to construction records in

1 10/16/86 and once again revised in accordance with
2 construction records 5/5/88. And that is defining
3 these as as-built plans. Another key on this is that
4 it notes on here -- and just for everybody's purpose,
5 FM&L is an abbreviation for forced main line, and it
6 notes that the top of the pipe is 42 inches below
7 grade, and then it shows the existing grade and it
8 shows the pipe being 42 inches below existing grade.
9 And just --

10 Q. What's that mean?

11 A. That means the top of the pipe is 42 inches
12 below the ground you walk on.

13 Q. And that would be as-built?

14 A. It would be as-built per the -- per revision
15 of 1988. I'd like to note one other thing for
16 clarification on maybe individuals who have not seen
17 these sort of maps before or drawings, but it's
18 important on this one to take note of elevations on
19 the side. It looks as if the line -- the line
20 itself --

21 Q. Breaks?

22 A. -- breaks, and it actually does not. If
23 you'll notice on the middle, it ends at an elevation
24 of 625, and that's where it's picked up on these
25 splotched-together sections. I've put two

1 construction drawings side by side so that stationing
2 would match up, if that's clear.

3 Q. That's fine.

4 HEARING OFFICER: The Hearing Officer
5 understands.

6 Q. (By Mr. Brownlee) And that's the 18-inch
7 PVC pipe, correct?

8 A. Yes, it is.

9 Q. Now, if you'll turn to Applicant's
10 Exhibit 20...

11 MR. MCGOVERN: We don't have 20.

12 HEARING OFFICER: No. This is an
13 add-on. Applicant's 20, is this again part of the
14 documents that were provided in discovery, which this
15 is -- or is this a complete document?

16 MR. MCDONALD: No. This was provided
17 in discovery.

18 HEARING OFFICER: In discovery?

19 MR. MCDONALD: Correct.

20 HEARING OFFICER: Proceed, Mr.
21 Brownlee.

22 Q. (By Mr. Brownlee) Would you describe what
23 the first page of that document is?

24 A. The first page of this document is a daily
25 construction report from Archer Engineers.

1 Q. What is that? What's a daily construction
2 report?
3 A. It's a report on what happened that day.
4 Q. Do you know who Archer Engineers is?
5 A. To the best of my knowledge, they monitored
6 the 24-inch forced main construction.
7 MR. MAUER: Lack of foundation, your
8 Honor.
9 HEARING OFFICER: The document speaks
10 for itself that Archer Engineers has something to do
11 with the 24-inch forced main construction.
12 Overruled.
13 Q. (By Mr. Brownlee) What's the first page of
14 that indicate?
15 A. Well, the first page indicates that this
16 work took place approximately around February '02.
17 And there's a couple of key things I'd like to note.
18 The first, under Equipment, it shows an Hitachi 330,
19 and just for everyone to know, that's about a
20 70,000-pound excavator. Then they also listed a
21 Komatsu WA 250, a Cat 913B and two Cat 963's. And
22 the Cat 963's are medium-sized Cat high-lifts. And
23 that's what was on site this day.
24 Now, another key note on this first -- on
25 this page here, it says, "Concrete encased forced

1 main from Station 247 plus 25 to 249 plus 25." And
2 once again, that equals 200 feet.
3 Q. And is that -- and I think we kind of jumped
4 ahead. Is this the 24-inch pipeline that we've
5 talked about?
6 A. This is the 24-inch pipeline, and
7 specifically this stationing is stationing on our
8 property at the proposed mine site.
9 Q. What does the enclosed forced main indicate?
10 A. Well, an encased forced main is -- and it
11 says, "Concrete encased," so they've poured concrete
12 around it as to protect it for traffic over the top
13 or other -- other instances you'd need it encased.
14 It's simply stating that the forced main has indeed
15 been encased around it with concrete.
16 Q. So the 24-inch main on the easement on your
17 property is concrete encased?
18 A. For 200 feet it is.
19 Q. And are you able to identify by referring to
20 Page 2 of that document where that is related to the
21 easement on your property?
22 A. Yes, I can. On Page 2 -- now, these are the
23 construction drawings again for the section of land
24 that we're proposing the mine site on, and it shows
25 down at the bottom of the page the stationing. And,

1 in fact, they had originally planned to construct
2 150 feet of encasement and in turn, though, actually
3 did 200 feet of encasement. And it can be noted by
4 the stationing that I mentioned.
5 Q. What's the date of this document on the
6 construction of the 24-inch line?
7 A. 2/14/02.
8 Q. And did I get you the date on Exhibit 19?
9 A. Exhibit 19 date, it has -- yeah, we went
10 over all the dates.
11 Q. Okay. And does that coincide with the dates
12 that these two lines were, in fact, constructed?
13 A. Yes. And there's another key piece of
14 information on this map also, on the -- regarding the
15 24-inch line.
16 Q. And what is -- please explain that.
17 A. It shows on here -- and this is what the
18 Sewer Board sent to us when we asked for discovery --
19 "Pipe is shown at a covered depth of 84 inches;
20 however, a minimum of 36-inch cover will be
21 acceptable." Then it goes on to describe "New
22 24-inch DIP forced main." So it's got a minimum
23 cover of 36 inches.
24 Q. And when you prepared the blast plan, you
25 and the others, were you aware of these documents?

1 A. We were.
2 Q. And did you utilize the blast plan in
3 relation to the information contained on these
4 documents, the as-builts?
5 A. Yes. We took all of this into
6 consideration.
7 Q. Turning to the quarry operations if this
8 permit is granted, I'd like to just kind of
9 explain -- have you go through a little of this. In
10 terms of the process, how would you begin mining if
11 this permit is granted?
12 A. Just kind of a step by step of what we would
13 do?
14 Q. Yeah.
15 A. A very basic outline is we would first get a
16 road into our site down to the Hudson Hollow valley
17 that we've all been on. We would clear and grub,
18 remove trees, overburden, that was needed to start
19 preparing a site to set the plant up. So we'd haul
20 any overburden down to the plant site. We'd
21 establish and build a foundation for the plant site
22 along with the stockpile area there. We'd have a
23 finish and prep site. We would have to move a scale
24 in and also an office, and then we would begin
25 blasting in accordance with our mine plan for our

1 production shots.

2 Q. What size of plant -- and maybe we should
3 say, when you say "plant," what do you mean by that
4 in terms of quarrying?

5 A. By plant I mean the pieces of equipment used
6 to process the aggregate.

7 Q. So the plant is not just a single piece of
8 equipment?

9 A. No.

10 Q. What does it comprise?

11 A. In this case the plant that we would bring
12 down here comprises three crushers, three screens and
13 various conveyors.

14 Q. Will there be any dust suppression controls
15 utilized?

16 A. Yeah. The plant itself has a high pressure
17 water spray system on it, but as I noted earlier, the
18 rock down here, it's a very good chance that it won't
19 even be needed because of the moisture content of the
20 rock.

21 Q. Will there be haul trucks utilized from the
22 pit or excavation area?

23 A. No, there won't be any haul trucks down
24 here. The stockpiles will be built via conveyors,
25 radial stackers. And a radial stacker is simply a

1 conveyor that has the ability to move back and forth.

2 And then as far as getting rock to our
3 plant, we will load from a face with a loader into a
4 primary crusher, which will then be conveyed to the
5 rest of our plant. And as the face would work
6 farther away, you add more conveyors to travel the
7 distance as opposed to hauling it. And this is done
8 just -- it's a benefit to everybody. It's a benefit
9 to us. We don't have additional laborers in the
10 trucks. We don't have the additional fuel, the
11 potential to emit emissions. Just it's efficient and
12 the right thing to do for everyone.

13 Q. Does your blast plan have a distance
14 included in it where mining would cease as related to
15 the sewer line?

16 A. Yeah. If you look at the exhibit, it says,
17 "We will be stopping at 150 foot from the sewer
18 lines."

19 Q. Do you know how long it would take you
20 according to the production estimates to reach that
21 150-foot spot if you started let's just say in two or
22 three months?

23 A. It would take approximately ten-plus years
24 before it would reach that point at 150 feet.

25 Q. Now, if you have to get equipment across the

1 sewer line for a reason, what steps would Magruder
2 take to make that crossing?

3 A. Well, if the sewer lines are still there in
4 ten or so years, we would simply hire an engineer to
5 construct -- to give us instructions on how to cross
6 that line. It's not uncommon. And, in fact, as we
7 mentioned, at least the 24-inch line is encased. We
8 could probably further investigate whether the
9 18-inch line is encased also.

10 Q. When those sewer lines come down the hill,
11 are they already being crossed by roads and highways
12 to get into that whole -- the area that we're talking
13 about?

14 A. I don't know how they can't be. Those sewer
15 lines are crossed -- and sewer lines are crossed
16 every single day. And there is a road on top of the
17 sewer lines as we sit here today. I mean, I think
18 everybody saw it when we was out there. There's a
19 gate on one side of our property on the sewer line
20 and a gate on the other side of our property line on
21 the sewer line, and they have access to run up and
22 down the easement.

23 Q. Do you have any special precautions or
24 special concern about blasting under the utility
25 lines, the power lines?

1 A. No.

2 Q. And why is that?

3 A. It's being done in other places. Like I
4 mentioned earlier, there's utility lines that are
5 blasted around and under every single day. You can
6 spot one from Highway 54 and Lake Ozark Sand &
7 Gravel's operation. I've talked to a guy with Ameren
8 UE --

9 MR. MAUER: Objection, your Honor.
10 Hearsay.

11 HEARING OFFICER: Sustained.

12 Q. (By Mr. Brownlee) Do you have a plan for
13 ingress and egress to the site that's not the
14 existing road from Wood River down to the sewer
15 plant?

16 A. Yeah. We're going to construct a road on
17 the southwest corner of the property out to Wood
18 River Road.

19 Q. So it'll go up through your property up the
20 hill?

21 A. Correct.

22 Q. From the valley?

23 A. Correct.

24 Q. Now, there's been some questioning about if
25 Magruder has a plan if the sewer line would break.

1 You have been privy to that through depositions and
2 hearing, correct?

3 A. I've heard of others' concerns, yes.

4 Q. Do you have any understanding about how a
5 sewer line or an underground line could rupture or
6 break?

7 A. Well, just in general --

8 MR. MAUER: Objection, your Honor,
9 I'm sorry, that this witness has any experience or
10 any basis for knowledge.

11 HEARING OFFICER: Yeah. I don't
12 believe -- I consider the witness to have a great
13 deal of experience and knowledge in the areas that
14 he's thus far testified to, but I haven't gleaned
15 anything as far as an expertise dealing with forced
16 main lines.

17 MR. MCGOVERN: Well, I'm sorry. I
18 would further object, if he's going to provide expert
19 testimony, he was not identified as an expert in the
20 earlier disclosures, which those dates are long past.

21 HEARING OFFICER: The fact that the
22 Applicant didn't identify him as an expert, I don't
23 know of anything that prevents me as the Hearing
24 Officer for the Commission from recognizing him.
25 There is sufficient foundation for the matters that

1 he's testified to thus far to establish his expertise
2 in those areas. This is an area that has not been
3 established. Plus it's my understanding that all
4 parties have deposed this witness.

5 MR. MCGOVERN: I understand. And I
6 don't think he's rendered any expert opinions up
7 until now. He's now being asked to render an opinion
8 with respect to breakage in pipes.

9 HEARING OFFICER: I just ruled that
10 he is not an expert for purposes of testifying to a
11 rupture of a forced main line, unless you can lay
12 some foundation, Mr. Brownlee.

13 Q. (By Mr. Brownlee) As a person engaged in
14 the construction business, do you know how lines
15 might leak or break?

16 MR. MCGOVERN: Objection. Lack of
17 foundation. There's no testimony that he is engaged
18 in the construction business other than the operation
19 of quarries.

20 MR. BROWNLEE: Okay.

21 HEARING OFFICER: Sustained.

22 Q. (By Mr. Brownlee) During your employment
23 with Magruder, have you been, in your projects that
24 you've directly been involved in, been involved in
25 either the construction of water or sewer lines as

1 part of the construction process?

2 A. Yes.

3 Q. And describe those kind of jobs.

4 A. Well, we've been involved in MODOT projects,
5 one in particular last year where we constructed
6 several concrete pipelines and then -- and I say
7 pipelines. They were used more for drainage, but in,
8 you know, 30-inch, 18-inch, some 24-inch lines on
9 MODOT projects. And I've been involved in
10 construction for ten years.

11 Q. Have you ever put construction lines of
12 underground lines on your own property in quarries?

13 A. Yeah. I actually helped in running water
14 lines from our well up to an office and to a shop at
15 our Troy quarry.

16 Q. If a line could break, are there -- in your
17 view, having your experience, could you describe --
18 could a line leak?

19 A. Yes.

20 MR. MAUER: Objection.

21 MR. MCGOVERN: Objection. Lack of
22 foundation. He's testified we have been involved in
23 these construction projects. What he's referring to
24 is Magruder Construction Company. He works for
25 Magruder Limestone. I haven't heard any testimony

1 that Mr. McDonald was, in fact, the one doing the
2 work on those projects.

3 HEARING OFFICER: Mr. Brownlee,
4 unless this witness -- and simply because we're
5 dealing with a unique set of pipelines, whether this
6 witness has his personal knowledge and experience
7 relative to installing water lines or water drain
8 lines for MODOT, it simply doesn't fall into this
9 category of what we're dealing with.

10 MR. BROWNLEE: Let me try to go at
11 this another way, if I can. And this is not a huge
12 issue.

13 MR. MCGOVERN: I would disagree.
14 This is the issue.

15 Q. (By Mr. Brownlee) Have you heard testimony
16 that when this line breaks, whether it's through
17 deposition, that it's going to be a 100 percent break
18 spewing sewage out into the air?

19 A. Yes. Yes.

20 Q. And from your knowledge, what kind of break
21 is that called?

22 MR. MCGOVERN: Same objection.

23 MR. BROWNLEE: He's involved with
24 construction.

25 HEARING OFFICER: I understand he's

<p style="text-align: right;">Page 94</p> <p>1 involved in construction.</p> <p>2 MR. BROWNLEE: He isn't an expert.</p> <p>3 HEARING OFFICER: I understand that,</p> <p>4 Mr. Brownlee, but there is simply not the foundation</p> <p>5 in this record that Mr. McDonald has an expertise</p> <p>6 relative to these forced sewer main lines.</p> <p>7 MR. BROWNLEE: Well, I'm not talking</p> <p>8 about those forced sewer main lines. I'm just</p> <p>9 talking about a generic break in the line.</p> <p>10 Q. (By Mr. Brownlee) When that occurs and</p> <p>11 there's a 100 percent break in the line, is there a</p> <p>12 phrase you know of from construction as to what that</p> <p>13 break is described?</p> <p>14 HEARING OFFICER: I'll allow that.</p> <p>15 MR. BROWNLEE: Okay.</p> <p>16 A. It would be a compound break.</p> <p>17 Q. (By Mr. Brownlee) Caused by what?</p> <p>18 MR. MCGOVERN: Same objection.</p> <p>19 MR. MAUER: Objection, your Honor.</p> <p>20 HEARING OFFICER: Overruled.</p> <p>21 A. I think it could be caused by an earthquake</p> <p>22 or some kind of ground displacement.</p> <p>23 Q. (By Mr. Brownlee) And ground displacement,</p> <p>24 what does that mean to you?</p> <p>25 A. Well, it would be permanent ground</p>	<p style="text-align: right;">Page 96</p> <p>1 A. No.</p> <p>2 Q. Have you all considered this issue in terms</p> <p>3 of what you might propose for this project?</p> <p>4 A. Yes. After the discussion and the concern,</p> <p>5 you know, we have -- we have considered some very</p> <p>6 viable options.</p> <p>7 Q. Okay. And let me ask you, does the City of</p> <p>8 Osage Beach, to your knowledge, have a remediation</p> <p>9 plan for this kind of break?</p> <p>10 A. Not to my knowledge.</p> <p>11 Q. Now, could you tell the Commission what</p> <p>12 Magruder might suggest doing if there would be a</p> <p>13 compound break, what you might do?</p> <p>14 A. Well, from the information I've heard</p> <p>15 through depositions and through the whole proceeding,</p> <p>16 we could simply build an earthen berm along the</p> <p>17 downstream portion of our property of the pipeline in</p> <p>18 between the two hills where the pipeline is</p> <p>19 contained. We can build an earthen berm and have</p> <p>20 some sort of gate valve or flow valve in the earthen</p> <p>21 berm. In the event of a break caused by earthquakes</p> <p>22 or, you know, material failure, then we could simply</p> <p>23 shut the gate and contain enough of the sewage for</p> <p>24 probably 20 to 24-plus hours very easily.</p> <p>25 Q. It would depend on the size of the berm you</p>
<p style="text-align: right;">Page 95</p> <p>1 displacement. The ground would have to be</p> <p>2 permanently shifted for displacement and not returned</p> <p>3 to its original form.</p> <p>4 Q. And then is there any other kind of break</p> <p>5 that might not be involved with it, like a compound</p> <p>6 fracture?</p> <p>7 A. I think you could see it almost weekly, too,</p> <p>8 just simple leaks in lines and pipes and simple</p> <p>9 cracks, leaks.</p> <p>10 Q. And that doesn't involve, then -- that leak</p> <p>11 would be underground and contained, although it might</p> <p>12 show up as a leak?</p> <p>13 MR. MAUER: I'm sorry, your Honor.</p> <p>14 Lack of foundation and leading.</p> <p>15 MR. BROWNLEE: I'll just withdraw it.</p> <p>16 MR. MAUER: This is all Mr.</p> <p>17 Brownlee's testimony.</p> <p>18 MR. BROWNLEE: I've withdrawn it.</p> <p>19 HEARING OFFICER: It's been</p> <p>20 withdrawn, Mr. Mauer.</p> <p>21 MR. MAUER: I was just trying to get</p> <p>22 my objection on the record, your Honor.</p> <p>23 Q. (By Mr. Brownlee) Does the Land Reclamation</p> <p>24 Commission require Magruder to have an emergency plan</p> <p>25 in case this line might break?</p>	<p style="text-align: right;">Page 97</p> <p>1 built depending on the flow and what you could</p> <p>2 contain, correct?</p> <p>3 A. That's 100 percent correct.</p> <p>4 Q. And would you be willing to accept that as a</p> <p>5 special condition even though it's not required under</p> <p>6 Land Reclamation law?</p> <p>7 A. Yeah, we would.</p> <p>8 Q. Now, finally, if you purchased -- when did</p> <p>9 you purchase this land?</p> <p>10 A. Exactly? April or May.</p> <p>11 HEARING OFFICER: Could you give me</p> <p>12 the year, please?</p> <p>13 MR. MCDONALD: '07. '07.</p> <p>14 Q. (By Mr. Brownlee) Assume you -- when you</p> <p>15 purchased that land, you decided not even to put a</p> <p>16 quarry in.</p> <p>17 A. Okay.</p> <p>18 Q. You with me?</p> <p>19 A. All right.</p> <p>20 Q. Under Missouri law -- and I want you to make</p> <p>21 reference, if you would, to Section 444.766.</p> <p>22 HEARING OFFICER: Wait just a moment.</p> <p>23 MR. MAUER: Which exhibit are you</p> <p>24 looking at, Richard?</p> <p>25 MR. BROWNLEE: It's Applicant's 3.</p>

25 (Pages 94 to 97)

1 It's the statutes.
 2 HEARING OFFICER: Applicant's 3.
 3 Which has been received into evidence. The witness
 4 has been handed a copy of Applicant's 3.
 5 Q. (By Mr. Brownlee) Do you have that, sir?
 6 A. Getting close. Yeah. This is in a
 7 different format than I'm usually looking at.
 8 Q. Let me just give you mine.
 9 A. Okay.
 10 Q. Is that the format you're used to seeing?
 11 A. Yeah, this is the one I'm used to seeing.
 12 Q. Under Section -- again, under Section
 13 444.766, those are exceptions to the Land Reclamation
 14 Act provisions, correct?
 15 A. Yes, they are.
 16 Q. And assuming when you bought this land, are
 17 there provisions in this section that you could
 18 utilize in order to develop that land?
 19 A. Yes, there are. If we would have chose to
 20 develop the land --
 21 Q. And what do you mean by develop the land?
 22 A. Well, develop it into warehouses, to a Bass
 23 Pro, et cetera. It plainly states in 2 and
 24 parentheses 1, "Excavation for construction pursuant
 25 to engineering plans and specifications prepared by

1 an architect, professional engineer or landscape
 2 architect licensed pursuant to Chapter 327 RSMo for
 3 any excavation for construction performed under a
 4 written contract that requires excavation of minerals
 5 or fill dirt and establishes dates for completion of
 6 work and specifies the terms of payment for work
 7 shall be presumed to be for the purposes of
 8 construction and shall not require a permit for
 9 surface mining."
 10 Q. So if you chose when you bought this land to
 11 do it for construction, you could blast without a
 12 permit?
 13 A. As long as we were under the Missouri
 14 Blasting Safety Act guidelines.
 15 Q. Would there be any public notice to have to
 16 be sent out for this blasting?
 17 A. No.
 18 Q. And you could level, subject to the easement
 19 and the Missouri Blasting Safety, you could level the
 20 entire 205 acres, correct?
 21 A. That is correct.
 22 Q. Is there a public hearing requirement for
 23 that section should you have chosen to do that rather
 24 than do a quarry?
 25 MR. MCGOVERN: Objection. It's

1 irrelevant. We're not here on a construction
 2 project. We're here on a -- unless there's now a
 3 change in position that now you want to do the
 4 special project, I'm not sure of the relevance of
 5 going through the statute.
 6 MR. MAUER: Furthermore, there's been
 7 no information demonstrated that a licensed
 8 professional engineer has authorized or approved any
 9 sort of leveling of the 205 acres.
 10 MR. BROWNLEE: This is a generic
 11 question. I'm just getting to the point that there
 12 are options --
 13 HEARING OFFICER: You're trying to
 14 establish that it is well within the law for the
 15 owner of this property to, in fact, level it and not
 16 have a permit for blasting?
 17 MR. BROWNLEE: That's correct. And
 18 not have --
 19 Q. (By Mr. Brownlee) And would you have to
 20 give notice?
 21 A. No.
 22 HEARING OFFICER: Let me simply rule
 23 on this so we can dispense with it. The statute
 24 speaks for itself. The Hearing Officer is well-aware
 25 of it, and since it's been read into the record will

1 so take notice. I think we can move on to the next
 2 item.
 3 Q. (By Mr. Brownlee) And is there a similar
 4 provision for land improvements?
 5 A. Yes, there is.
 6 Q. And if you do either of those, the rock
 7 that's produced has to stay on the property,
 8 essentially, correct?
 9 A. There are provisions to having the site --
 10 the rock leave the property.
 11 Q. So would it be fair to say that if a permit
 12 is granted, there are more environmental controls
 13 than if improvements or construction would be made
 14 under this statute?
 15 A. Absolutely.
 16 MR. BROWNLEE: I've got nothing
 17 further.
 18 HEARING OFFICER: Mr. Duggan?
 19 MR. BROWNLEE: I'm sorry. I need to
 20 offer Applicant's 19 and 20, subject to supplying the
 21 rest of the document.
 22 HEARING OFFICER: Subject to
 23 submission of the completion of Document 19. I think
 24 that I understood 20 was complete.
 25 MR. MAUER: No. I don't believe 20

1 is complete.
 2 HEARING OFFICER: All right. There
 3 is a question as to whether 20 is complete. 19 and
 4 20 are offered. We will hold on taking objections
 5 until -- or further objections until the documents
 6 provided in 19 and 20 -- Applicant provides the
 7 Commission with what they believe to be the complete
 8 documents based upon what they obtained in discovery.
 9 With that, before we commence cross-examination, we
 10 will take a very short break, five minutes. Let's be
 11 back at 11:30, please.

12 (Brief recess.)

13 HEARING OFFICER: We're back on the
 14 record. Mr. Duggan, you're recognized for
 15 cross-examination of the witness.

16 EXAMINATION

17 QUESTIONS BY MR. DUGGAN:

18 Q. Just a couple of points. On the last one
 19 brought up related to Applicant's Exhibit 3, the
 20 statute, and the exceptions to the Land Reclamation
 21 Act provisions, you're not suggesting that the
 22 decision of the legislature to exempt construction
 23 projects from the Land Reclamation Act means
 24 construction projects are not otherwise regulated
 25 under environmental laws, are you?

1 A. I think we stated there was less
 2 regulations.

3 Q. One less regulation in the sense that the
 4 Land Reclamation law happens not to apply to those.
 5 Is that all you were trying to say?

6 A. Well, the Air Pollution Control Program, I
 7 don't know if they have dust requirements either like
 8 in the sense of opacity readings, et cetera.

9 Q. But you're assuming that; is that right?
 10 You don't know that one way or the other?

11 A. That's correct.

12 Q. And the only other point I want to bring
 13 out, when you mentioned site visits by Mr. Roberts
 14 and others from the Land Reclamation Program, those
 15 weren't official inspections for compliance purposes,
 16 were they?

17 A. The last site visit they came on that I
 18 mentioned, I think I, yeah, specifically said that we
 19 requested them to be there for Land Reclamation
 20 issues for informational purposes.

21 Q. For information to be conveyed to you; is
 22 that correct?

23 A. Correct. But along those lines, I think if
 24 there had been a problem or a violation, we would
 25 have known about it also.

1 Q. But it was not represented to you that they
 2 were conducting an official compliance inspection at
 3 the time they responded to your request to see the
 4 site and give you information?

5 A. Correct.

6 MR. DUGGAN: No further questions.

7 HEARING OFFICER: Mr. McGovern?

8 EXAMINATION

9 QUESTIONS BY MR. MCGOVERN:

10 Q. Mr. McDonald, just as I understand it, prior
 11 to your employment at Magruder Limestone Company, you
 12 don't have any prior experience with respect to
 13 either the running or the operation of a rock quarry,
 14 correct?

15 A. Correct.

16 Q. In fact, your prior employment with GROWMARK
 17 was in a farming capacity, correct?

18 A. Correct.

19 Q. That was some 1,200 acres that you in some
 20 fashion helped farm over in Illinois; is that right?

21 A. No. I -- no. It was about 12,000 acres.

22 Q. Oh, 12,000. I'm sorry.

23 A. I was in the management section of it
 24 through a cooperative.

25 Q. There are designations within various

1 documents next to your name indicating QC, correct?

2 A. Correct.

3 Q. And the quality control that's referring to
 4 is the quality of the rock being produced out of the
 5 quarry and supplied to projects, such as MODOT
 6 projects, correct?

7 A. Correct.

8 Q. You're not responsible, at least you haven't
 9 been in the past, for the quality control of the
 10 manner in which the work is performed, the labor on
 11 the quarry sites themselves; is that correct?

12 A. Well, describe past.

13 Q. Well, you've indicated you assumed these new
 14 responsibilities, I thought you said, within the last
 15 year as vice-president more overseeing the general
 16 operations; is that correct?

17 A. Well, in the last two years I've -- I
 18 officially became -- you know, it was approximately
 19 two years ago the vice-president, but no, it's not
 20 fair to say I didn't have any responsibility for
 21 other items prior to that.

22 Q. I understand, but the quality control
 23 designation goes to the quality of the rock, correct?

24 A. That is correct.

25 Q. And as I understand it, if, in fact, a

1 permit is issued for this particular site and the
2 plant is installed and it begins to operate, you're
3 not going to be the one on site actually monitoring
4 the work performed, correct?

5 A. Not every day.

6 Q. In fact, there will be a superintendent who
7 reports to you; isn't that right?

8 A. There will be a superintendent, a foreman,
9 but I will be down there very frequently.

10 Q. And that's because that will be a new plant
11 and you want to make sure that it is started
12 correctly; isn't that right?

13 A. Correct.

14 Q. And once it is operational, you will have
15 responsibility over all those other quarry locations,
16 correct?

17 A. Correct.

18 Q. And there are people other than yourself who
19 work for Magruder who will be the ones actually on
20 site responsible for the daily operations; isn't that
21 right?

22 A. Yeah. There will be additional people on
23 site.

24 Q. In fact, the hierarchy will be there is a
25 superintendent who I believe is Mr. Twellman who

1 reports to you; is that correct?

2 A. Yeah. He -- we work in conjunction.

3 Q. And Mr. Twellman has responsibility over
4 those various quarry sites; isn't that correct?

5 A. He has responsibilities over those -- yes,
6 over all the sites.

7 Q. And there are foremen on each -- at each
8 quarry that in turn are responsible for the direct
9 day-to-day operations who in turn report to
10 Mr. Twellman; is that right?

11 A. Yeah. I mean, your hierarchy is right. I
12 think his official title is production manager, and
13 then there's superintendents and foremen at each
14 site, correct.

15 MR. MCGOVERN: Mr. Tichenor, it might
16 help if you would hand the witness McGovern's
17 Petitioners exhibits. I think that would go a lot
18 faster than if you pulled those out.

19 HEARING OFFICER: Just the entirety?

20 MR. MCGOVERN: Yeah. I think that
21 would be easier.

22 HEARING OFFICER: They are coded by
23 number, so as the Counsel refers to the numbers, you
24 can look at those.

25 MR. MCGOVERN: I think it would be

1 easier than you pulling them out.

2 HEARING OFFICER: Sure. Thank You.

3 Q. (By Mr. McGovern) You indicated in your
4 direct examination that most of the violations you
5 had in the past are record keeping and dust; is that
6 correct?

7 A. At the Troy quarry, yes.

8 Q. I think you indicated all of the violations
9 were more record keeping paperwork-type issues,
10 correct?

11 A. No. I think I stated we were referring to
12 the violations at Troy, and the question was asked
13 what did they pertain to, and I said dust and record
14 keeping.

15 Q. And those Troy violations, you identified
16 approximately nine; is that correct?

17 A. Approximately.

18 Q. And that would have occurred over the period
19 of approximately one year; is that right?

20 A. A little bit longer.

21 Q. And in that one year, according to your
22 testimony, that would be 200 days of operation; isn't
23 that correct?

24 A. In a year, correct.

25 Q. So if we were to do another calculation, you

1 did one calculation of 5,200 operational days looking
2 at a total of 11 violations, and you did some
3 calculation to come up with a percentage to suggest
4 some probability of future violations, correct?

5 A. I think we were just stating the facts.

6 Q. That's your point, isn't it?

7 A. We were just stating the facts.

8 Q. All right. If we do that same calculation
9 and I've got, you said, a little bit more than
10 one year of operation at that Troy plant and I have
11 200 days of operation during the course of a year, at
12 least as to the Troy operation you had nine
13 violations in 200 operational days; is that correct?

14 A. I'm sorry. Repeat one more time.

15 Q. You indicated that during the period of
16 approximately one year, I think you said maybe a
17 little bit more?

18 A. Uh-huh.

19 Q. Yes?

20 A. Correct.

21 Q. There were nine violations issued, and
22 you've given us excuses and reasons why that
23 happened. So if we were to do the same type of
24 calculation you just did before on direct
25 examination, I've got about 200 days in which you

1 operated the quarry, and during those 200 days, nine
 2 violations were issued to the quarry, correct?
 3 A. To that site, yeah, approximately.
 4 Q. Now, you indicated that violations occurred
 5 during that period because there were changes made,
 6 you were changing equipment, you tried a different
 7 suppression system; is that accurate?
 8 A. Yeah. There were several reasons given.
 9 Q. And I assume the distinction you're trying
 10 to make between possibly the other quarries is this
 11 was all different, you were doing different things at
 12 this site, it wasn't an existing operational
 13 facility; is that correct?
 14 A. No. The distinction I was making when I was
 15 giving reasons why this happened, I don't know if I
 16 was at that point distinguishing between that quarry
 17 and any other quarry. I was stating what happened
 18 and why.
 19 Q. Now, you also testified that when you get a
 20 complaint that one of the things you do is it goes to
 21 you, I guess in certain instances you then share that
 22 with your insurance carrier; is that correct?
 23 A. Yes. There have been certain instances
 24 where we have.
 25 Q. And so I understand your testimony, you've

1 indicated that not one time has Magruder ever paid a
 2 claim; is that correct? Magruder directly has never
 3 paid a claim?
 4 A. That's correct.
 5 Q. And the insurance company, I assume that
 6 means the adjuster handling the claim, has never paid
 7 a claim with respect to a Magruder complaint; is that
 8 right?
 9 A. To my knowledge, we have not paid a claim.
 10 Q. Now, if we were to do the math on the number
 11 of days and the number of complaints that you've had,
 12 do you have any idea the number of complaints that
 13 Magruder has received?
 14 A. No.
 15 Q. In terms of the -- I want to switch to the
 16 topic of the public notice and the notice that was
 17 provided. You indicated that the purpose behind that
 18 is to provide information to the public; is that
 19 correct?
 20 A. Correct.
 21 Q. And you indicated -- and I'll ask you the
 22 question. That information you're talking about is
 23 information regarding the project; is that right?
 24 A. Information regarding the mine in question.
 25 Q. And it's going to come in two sources, and I

1 think Mr. Brownlee's established this, that the one
 2 is going to be in the public notice in the paper that
 3 you would agree with me really gives you limited
 4 notice, doesn't it?
 5 A. I would not agree with that.
 6 Q. It tells me where it is, how many acres and
 7 who's going to quarry it, correct?
 8 A. That's a lot of information.
 9 Q. Well, if I want to find out what the
 10 post-reclamation plan is and I want to find out what
 11 kind of grass is going to be planted and I want to
 12 find out if there's easements or utilities on the
 13 property, I need to do the very thing Mr. Brownlee
 14 suggested, and that is come down, visit the DNR on a
 15 Sunshine request and review all that other
 16 information you've submitted, correct?
 17 A. Yeah. That would be one way.
 18 Q. And the point of all that process is to
 19 provide as much information as possible to the
 20 public; isn't that correct?
 21 A. The point of what process?
 22 Q. The public notice in the paper and a
 23 Sunshine request to look at the information held in
 24 the records at the DNR.
 25 A. The point of the process is to provide

1 the -- to give the public a chance to see the
 2 required information.
 3 Q. And you would agree with me that you should
 4 provide the public as much information as the law
 5 requires so that they can make informed decisions as
 6 to what they should do, correct?
 7 A. I would agree that the public needs to see
 8 what's required.
 9 Q. And the decisions they have to make is, one,
 10 decide whether to request a public meeting, correct?
 11 A. That would be a decision.
 12 Q. And the purpose behind that public meeting
 13 is an opportunity for the operator as well as the
 14 public to address each other's concerns, try to
 15 answer questions and provide more information as to
 16 what that project entails; is that correct?
 17 A. That could be a possibility.
 18 Q. Not a possibility. You've been to one,
 19 haven't you?
 20 A. I've had one.
 21 Q. And isn't the point of those meetings that
 22 the consumers, the public, sit there and they ask
 23 questions about what the project is going to entail?
 24 A. It's a chance for the producer and the
 25 public to work together, right, explain issues.

<p style="text-align: right;">Page 114</p> <p>1 Q. And in doing that, possibly resolve some of 2 their concerns and some of the issues as you've 3 described them; isn't that correct? 4 A. Right. That's possible. 5 Q. But you've indicated that Magruder decided 6 not to do that because you didn't think it would be 7 efficient in this case; is that correct? 8 A. That's correct. 9 Q. So where there was an opportunity to provide 10 information to the public, tell them more about this 11 project, provide answers to any of their questions, 12 Magruder elected not to do that; is that right? 13 A. We elected not to hold a public meeting, 14 which was perfectly legal. 15 Q. I'm not questioning whether it's illegal or 16 legal. I'm simply asking you as to whether or not 17 the decision was made not to have that meeting. Now, 18 in lieu of the meeting, the public can request a 19 hearing such as the one we're in today; isn't that 20 correct? 21 A. That is correct. 22 Q. In fact, the decision Magruder made was to 23 simply bypass that public meeting, and you knew this 24 was eventually going to end up in a hearing; isn't 25 that right?</p>	<p style="text-align: right;">Page 116</p> <p>1 A. That is correct. 2 Q. It is not there to provide any insurance to 3 solve a compound break in the line as you described 4 it or any other leak or failure of that line; isn't 5 that correct? 6 A. That's correct. 7 Q. It also is not there to protect surrounding 8 businesses who may have to shut their doors for some 9 period of time because of a potential break or 10 interruption in that line; isn't that right? 11 A. I've stated it doesn't -- it doesn't insure 12 the line. 13 Q. Take a look at the original application, if 14 you would, which again was Applicant's MP-5? 15 A. I'm sorry. 16 Q. Go ahead. MP-5 would be better because I 17 can just keep you in the binder. 18 A. Okay. 5? 19 Q. Yes. If you looked at the page identified 20 as Site Information? 21 HEARING OFFICER: Wait just a moment. 22 I believe 5 and 6 may be getting -- well, wait a 23 minute. 24 THE WITNESS: I've got 5. 25 HEARING OFFICER: You've got 5. Let</p>
<p style="text-align: right;">Page 115</p> <p>1 A. Correct. Well, no, we didn't know it was 2 going to end up in a hearing. We knew they had a 3 chance to request a hearing. 4 Q. Move on to a different topic of just the 5 bonding. Just so the record is clear, this bond has 6 nothing to do with solving any breaks in the line or 7 any other liability that may arise because of 8 blasting activities on this project, correct? 9 A. The bonding is for reclamation assurance. 10 Q. It's for reclamation only? 11 MR. BROWNLEE: Excuse me. Put your 12 hand down. You're talking into your fist. Thank 13 you. 14 MR. MCGOVERN: Which makes it tougher 15 for the court reporter to hear what you're saying. 16 MR. BROWNLEE: He's hiding it. 17 HEARING OFFICER: Proceed, Mr. 18 McGovern. 19 MR. BROWNLEE: I'm sorry. 20 Q. (By Mr. McGovern) The reclamation bond is 21 purely to ensure that at the end of the operations of 22 this quarry, or at least as you provided through the 23 mine plan, that if the company doesn't undertake the 24 reclamation that it said it would do, the bond is 25 there to make sure that happens, correct?</p>	<p style="text-align: right;">Page 117</p> <p>1 me have the binder a minute while you testify. 2 MR. MCGOVERN: I'll wait until he 3 gets it back. 4 MR. BROWNLEE: We can give him 5 another one. 6 HEARING OFFICER: He's got 5. You 7 can go ahead and proceed with the question. 8 Q. (By Mr. McGovern) If you look at the page 9 identified as Site Information, and I think you were 10 referring to the note that you included at the bottom 11 of the page, which I know you said you didn't have to 12 do, but when you testified you indicated that we're 13 going to enter into a lease at some point, are there 14 any notes within this entire application that 15 indicate that, in fact, you're going to or Magruder 16 or Eolia are going to enter into a lease agreement at 17 some point? 18 A. The definition here says that, "We are going 19 to lease from Eolia Development." 20 Q. In fact, what it says is "We are leasing 21 from Eolia Development," correct? 22 A. Correct. 23 Q. Then if I look at the Source of Right to 24 Mine, you have checked the box Lease. Do you see 25 that, looking at the bottom of the page?</p>

1 A. Oh. Source of Right to Mine. Yes.
 2 Q. There's a box next to it, you've identified
 3 lease. Do you see that?
 4 A. Yes, I checked the Lease box.
 5 Q. Then it says, "Date of Agreement." You've
 6 identified the date of the agreement as May 1, 2007,
 7 correct?
 8 A. That is correct. We had a verbal agreement
 9 back then. We discussed it many times.
 10 Q. I understand that, but if you're suggesting
 11 now today that you had a verbal agreement, then why
 12 didn't you check the box Verbal instead of Lease?
 13 A. It was a verbal lease. I mean, I think
 14 we're going down a road that's irrelevant.
 15 Q. Well, it's not irrelevant. The question is
 16 whether or not the application submitted was complete
 17 and accurate, and so what I'm asking you is, when
 18 you've identified 5/1/07 and you indicated lease, it
 19 is your testimony now today that what you meant by
 20 that is a verbal lease although you didn't check the
 21 word verbal? Is that what you're saying?
 22 A. I'm saying that we -- that my intent of this
 23 was to relay to the DNR that we were going to have a
 24 lease from Eolia Development for the mineral rights.
 25 And I don't know how much more you can read into

1 this.
 2 Q. I'm simply asking, where on this document do
 3 you suggest that sometime into the future you are
 4 going to enter into such a lease agreement as
 5 compared to what you actually wrote down which says
 6 "Lease" and you provided a date of an agreement?
 7 A. And we did have an agreement.
 8 Q. And it's -- okay. So if I was to actually
 9 do this correctly, then, according to your testimony
 10 today, do you agree with me you should have checked
 11 the box Verbal and not Lease?
 12 A. No, I don't -- I disagree with that.
 13 Q. Then looking just above that, also in the
 14 same provision, the box above Source of Right to
 15 Mine, you've indicated leased and you've given a date
 16 of April 18th, 2007. Do you see that?
 17 A. Yes.
 18 Q. And that's under the box entitled "Date of
 19 Agreement," correct?
 20 A. Correct.
 21 Q. And is it your position today that what you
 22 intended by that is actually a verbal agreement?
 23 A. Once again, I mean, we have a verbal lease,
 24 and that's our right to mine.
 25 Q. And yet you have a verbal lease which you

1 identified, although you call it a lease and not
 2 verbal April 18th, 2007, and then down below that
 3 there is a verbal lease, despite the fact you didn't
 4 check the box verbal and which you've now dated it
 5 May 1, 2007, correct?
 6 A. The dates are correct, and I checked leased
 7 on both boxes. Well, I mean, this...
 8 Q. I'm sorry?
 9 A. No. It's... I don't know where we're
 10 going.
 11 Q. You were also asked some questions with
 12 respect to the distinction between a new permit
 13 application as compared to a permit expansion,
 14 correct?
 15 A. Yes.
 16 Q. This in this case is a permit expansion;
 17 isn't that right?
 18 A. That is correct.
 19 Q. Have you ever filled out an application for
 20 a new permit?
 21 A. I don't know.
 22 Q. Are you aware that when you fill out such an
 23 application one of the things that you have to
 24 identify are all companies related to the Applicant?
 25 A. Without having the instructions in front of

1 me, I don't know.
 2 Q. Are you aware that one of the other items
 3 that you have to identify when filing for a new
 4 application is a list of all prior violations?
 5 A. Once again, without having the rules in
 6 front of me, I don't know.
 7 Q. Was there ever any discussion among any
 8 representatives of Magruder, including yourself, in
 9 which it was discussed that it would be better to do
 10 a permit expansion because it requires less
 11 information to be submitted to the DNR?
 12 A. Absolutely not. It was -- it's a standard
 13 procedure.
 14 Q. Let's talk now in terms of this 50-foot
 15 set-back. You certainly discussed the fact
 16 internally, didn't you, Mr. McDonald, that if we
 17 establish a 50-foot set-back for the mine plan that
 18 we won't have to provide notice to the surrounding
 19 adjacent property owners?
 20 A. I can't say it didn't come up in
 21 conversation.
 22 Q. In fact, you can say it did come up, didn't
 23 it?
 24 A. I was aware that that's the rule.
 25 Q. You were aware of the rule that if, in fact,

1 you bring that set-back line in that you don't have
2 to provide notice to the adjacent contiguous property
3 owners; isn't that correct?

4 A. Correct, I was aware of that.

5 Q. And you certainly discussed that very matter
6 with other representatives of Magruder prior to the
7 time that you created the mine plan, didn't you?

8 A. That's been over a year ago. I mean, I'm
9 sure we had some conversation regarding this, but I
10 can't pinpoint on, you know, exactly what I discussed
11 like you're asking.

12 Q. I understand, but generally speaking, you
13 recall having that discussion internally, don't you?

14 A. I said I do not. I'm sure I discussed this
15 with other personnel, but can I remember that exact
16 conversation? No, I can't.

17 Q. That's not what I asked you. As you sit
18 here today, you do recall a conversation, correct?

19 MR. BROWNLEE: Your Honor, I'm going
20 to object to the relevance. It's legal what's done.
21 I mean, what his motives were have nothing to do with
22 anything relevant to this permit.

23 MR. MCGOVERN: There are references
24 within the -- --

25 HEARING OFFICER: Wait just a moment.

1 Have you completed your objection?

2 MR. BROWNLEE: It's a relevance
3 objection.

4 HEARING OFFICER: And Mr. McGovern
5 responds.

6 MR. MCGOVERN: And I understand that.
7 There are references within these documents about
8 Magruder being a good neighbor, some of the decision
9 to allow for this or recommend approval of this
10 permit is based upon several instances in which
11 they're identified as a good neighbor. There has
12 been testimony about disclosure of information to the
13 public, and I think that's exactly what was not
14 happening here. So the purpose of the question is
15 nothing more than to address the question of whether
16 or not they would be a good neighbor which I think
17 ties directly into whether or not there is impact on
18 health, safety or livelihood.

19 MR. BROWNLEE: And there's --

20 HEARING OFFICER: Wait just a moment,
21 Mr. Brownlee. How does whether or not -- I want to
22 understand your tie-in whether or not the company is
23 a good neighbor ties into health, safety and
24 livelihood of any of your petitioners.

25 MR. MCGOVERN: Because right now all

1 we're dealing with is probabilities. There is no
2 quarry which is in existence, so all you have to look
3 at is whether or not there's going to be an impact.
4 Based on that, we have history of non-compliance
5 which we're going to go through shortly. You have
6 certainly part of the recommendation was based upon a
7 good neighbor, and if, in fact, it's an operator who
8 is not going to follow the detail of the law, who is
9 going to do the minimum they have to, I think that is
10 certainly going to fall on the issue of impact on
11 health, safety or livelihood. You've heard testimony
12 from the various --

13 HEARING OFFICER: I'm still -- -- Mr.

14 McGovern, I'm still not tracking how the fact that
15 the Applicant utilized the 50-foot set-back impacts
16 upon the health, safety or livelihood of any one of
17 your petitioners.

18 MR. MCGOVERN: That in and of itself
19 does not, of course.

20 HEARING OFFICER: All right. It goes
21 clearly to the good neighbor issue? That's why
22 you're asking?

23 MR. MCGOVERN: It goes back to the
24 issue whether or not prospectively there's going to
25 be impact on health, safety or livelihood, yes.

1 MR. BROWNLEE: That's the grossest
2 kind of speculation, and there's nothing in the laws
3 that have anything about good neighbor. You've ruled
4 on this.

5 HEARING OFFICER: The Hearing Officer
6 already ruled on that yesterday.

7 MR. MCGOVERN: I only have one other
8 question on this.

9 HEARING OFFICER: Objection is
10 overruled. Ask your other question.

11 Q. (By Mr. McGovern) You indicated,
12 Mr. McDonald, that the reason you did the 50-foot
13 set-back -- and I think you indicated it was because
14 of the difficulty that you would have in locating the
15 surrounding adjacent property owners; is that
16 correct?

17 A. No. I gave you several reasons. I said --
18 I think I mentioned that that could be a problem.

19 Q. Well, now, you said the extensive difficulty
20 to locate them was one of the reasons you decided to
21 do the 50-foot set-back; isn't that right?

22 A. I mentioned something about that, you're
23 right.

24 Q. All right. There are two maps obviously
25 attached to this application, correct?

1 A. Correct.
 2 Q. Take a look at the locator map, if you
 3 would.
 4 A. Okay.
 5 Q. You testified that the purpose of the
 6 locator map is to identify the location of the
 7 proposed quarry; is that right?
 8 A. I don't know if I testified to that, but
 9 that is one of the purposes, correct.
 10 Q. And if I look at the very locator map that
 11 you attached to your application and I look at the
 12 hatched area right down Quadrant 33 and I look to
 13 either side of the hatched area, doesn't that tell me
 14 who owns the property?
 15 A. No.
 16 Q. For example, if I look just to the south,
 17 isn't Gertrude Atkisson identified as the owner of
 18 that parcel?
 19 A. If you're saying that a plat map is
 20 up-to-date currently, then I'm disagreeing.
 21 Q. I'm not saying it's up-to-date. That's not
 22 my question. Isn't the identification of those names
 23 the identification of the owner of the property on
 24 this document?
 25 A. It's the -- on this document, yes.

1 Q. And I understand there could have been a
 2 transfer sometime thereafter, but as you look at this
 3 map, it tells you at least as of the time the map was
 4 created who the owners are, doesn't it?
 5 A. At the time the map was created, it tells
 6 who the landowners were.
 7 Q. And you had this map in your possession at
 8 the time you created your mine plan, didn't you?
 9 A. Correct. And this map was four years old at
 10 that time.
 11 Q. Take a look, if you would -- now let's talk
 12 about -- follow up on a few of Mr. Brownlee's
 13 questions regarding the regulation on the maps, just
 14 so I and the Hearing Officer understand your position
 15 on this. So I'm looking at that Section E(2) again
 16 within the Code of State Regulations.
 17 HEARING OFFICER: You want the Code
 18 of State Regulations?
 19 MR. MCGOVERN: Yes.
 20 HEARING OFFICER: I'm pulling
 21 Applicant's 2.
 22 MR. MCGOVERN: Correct.
 23 Q. (By Mr. McGovern) Just so we're clear on
 24 your position --
 25 A. Okay. Where at, first of all?

1 Q. I'm looking at E(2).
 2 A. Okay.
 3 Q. So you understand that on E(2), which is one
 4 map of sufficient scale and detail to illustrate the
 5 following, you certainly understand that illustrate
 6 means to show or draw, correct?
 7 A. To illustrate.
 8 Q. Means what to you?
 9 A. I'd have to look the definition up, I guess,
 10 to give you the exact meaning, but yeah, to locate
 11 it.
 12 Q. To show it?
 13 A. Or mark it on a map.
 14 Q. So we know that what is required in E(2) is
 15 to show or locate on a map the names of any persons
 16 or businesses having any surface or sub-surface
 17 interest in the lands to be mined. I think Mr.
 18 Brownlee stopped there.
 19 A. Correct.
 20 Q. And asked if you understood that. Then it
 21 says, "Including owners or leaseholders of the land."
 22 So you understand if somebody had a lease, you had to
 23 identify them, correct?
 24 A. No. Only if they had a lease of the land
 25 and utilities do I have to identify them.

1 Q. Okay. So your reading of this is that it
 2 would be including owners, because you're taking
 3 everything after "including" as to what you have to
 4 do, correct?
 5 A. I'm reading the whole --
 6 Q. All right. Let's do that. You're saying
 7 including owners or leaseholders of the land and
 8 utilities, so it would have to be someone who owned
 9 or leased the land and had a utility. Then it goes
 10 on to say, because I don't think any -- I think the
 11 questions ended here -- "As well as the names of all
 12 record landowners of real property located contiguous
 13 or adjacent to the proposed mine plan." So under
 14 your reading, after the word "including," the only
 15 people you would have to identify would be those who
 16 are owners or leaseholders of the land and own
 17 utilities and are record landowners of real property
 18 located contiguous or adjacent to the proposed mine
 19 plan; is that right?
 20 A. If you read the full sentence, that is
 21 correct.
 22 Q. Let's move on to another subject, just the
 23 question of the pipe itself. In the information that
 24 you have reviewed, do you have any understanding of
 25 the type of bedding material that was used?

<p style="text-align: right;">Page 130</p> <p>1 A. Yes.</p> <p>2 HEARING OFFICER: Could the Hearing</p> <p>3 Officer interrupt? The information now before the</p> <p>4 Commission is there are two different pipelines laid</p> <p>5 at two different times, pending additional documents</p> <p>6 to complete Applicant's 19 and 20, so would you</p> <p>7 reference relative to --</p> <p>8 MR. MCGOVERN: Sure.</p> <p>9 HEARING OFFICER: -- which pipeline</p> <p>10 we're dealing with, the 18-inch or the 24-inch?</p> <p>11 Q. (By Mr. McGovern) Regarding the 18-inch and</p> <p>12 the 24-inch pipe, do you have any actual knowledge of</p> <p>13 the type of bedding material that was utilized?</p> <p>14 A. Well, that was one of our discovery</p> <p>15 questions that we sent to you all or to the Sewer</p> <p>16 Board, and they did send back documents showing the</p> <p>17 bedding material and the backfill material.</p> <p>18 Q. You're telling me what the specifications</p> <p>19 called for, correct?</p> <p>20 A. I'm telling you what they sent us -- sent us</p> <p>21 per our discovery request. If that would have been</p> <p>22 accurate, I don't know what --</p> <p>23 Q. You're telling me what you read on</p> <p>24 documents; isn't that right?</p> <p>25 A. That is correct.</p>	<p style="text-align: right;">Page 132</p> <p>1 have been the specifications prepared prior to the</p> <p>2 work being performed, have you done any other</p> <p>3 investigation to determine what is in place on this</p> <p>4 project for the sewer?</p> <p>5 A. I have not dug them up and physically</p> <p>6 examined them.</p> <p>7 Q. Those specifications restricted the size of</p> <p>8 rock that could be used as part of the backfill,</p> <p>9 didn't they?</p> <p>10 A. I can't recall without having it exactly in</p> <p>11 front of me, but I'm sure it did.</p> <p>12 Q. They all do, don't they?</p> <p>13 A. Right. Well, I can't say they all do. They</p> <p>14 should.</p> <p>15 Q. They should. And do you know if there were</p> <p>16 any oversized rocks used as part of the backfill</p> <p>17 material?</p> <p>18 MR. BROWNEE: I'm going to object to</p> <p>19 the question as being oversized. We don't have</p> <p>20 anything in front of the Commission to explain what</p> <p>21 rock was supposed to be specified in the first place.</p> <p>22 MR. MCGOVERN: I'll ask the question</p> <p>23 differently.</p> <p>24 Q. (By Mr. McGovern) Do you have any personal</p> <p>25 knowledge whatsoever as to the size of the rock that</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. You're not telling me what you've actually</p> <p>2 seen on site, are you?</p> <p>3 A. I have not seen it.</p> <p>4 Q. So you don't actually know as you sit here</p> <p>5 today whether or not the bedding material called for</p> <p>6 in those specifications is actually the bedding</p> <p>7 material in place, do you?</p> <p>8 A. I have not dug the pipe up to see.</p> <p>9 Q. You haven't dug around the pipe, have you,</p> <p>10 to take a look?</p> <p>11 A. No.</p> <p>12 Q. Do you have any knowledge as you sit here</p> <p>13 today whether or not there has been any displacement</p> <p>14 of soil underneath any of those pipes?</p> <p>15 A. Displacement of soil?</p> <p>16 Q. Such that there are areas in which perhaps</p> <p>17 there have been cave-ins underneath the ground and</p> <p>18 the pipe is just suspended?</p> <p>19 A. No.</p> <p>20 Q. Have you done any investigation into the</p> <p>21 manner in which the compaction was done for that</p> <p>22 pipe?</p> <p>23 A. Just, I mean, I read over the documents that</p> <p>24 you all sent us.</p> <p>25 Q. Other than reading the documents which would</p>	<p style="text-align: right;">Page 133</p> <p>1 was used for backfilling?</p> <p>2 A. I think I've stated that several times.</p> <p>3 I've seen the documents that they sent to us and I've</p> <p>4 not physically dug the pipe up.</p> <p>5 Q. Take a look, if you would, at MP-6.</p> <p>6 A. Okay.</p> <p>7 Q. MP-6 is the letter from you dated</p> <p>8 February 5th, 2008, regarding the permit amendment;</p> <p>9 is that correct?</p> <p>10 A. It is, yeah.</p> <p>11 Q. And, in fact, in your letter you say, "Dear</p> <p>12 Mitch," which you're sending this to Mr. Roberts,</p> <p>13 "Enclosed are the rest of the fees and applications</p> <p>14 for the 90 additional acres being bonded at the Lake</p> <p>15 Ozark site. If you need anything else, let me know."</p> <p>16 Is there any reason why in the cover letter you</p> <p>17 didn't also identify the fact that you're submitting</p> <p>18 an amended detailed map?</p> <p>19 A. I'm not 100 percent sure that there wasn't</p> <p>20 another letter that I also sent, but to answer --</p> <p>21 what was your question again, though?</p> <p>22 Q. My question is, was there any reason why you</p> <p>23 didn't also alert Mr. Roberts to the fact that you</p> <p>24 were including within this correspondence an amended</p> <p>25 detailed map?</p>

1 A. I don't have a reason why I didn't include
2 it on the cover letter, no.

3 Q. In fact, you do as part of this submission
4 include the information on bonding, as well as now
5 there is a new detailed map which includes the
6 additional information of the easements and
7 utilities, correct?

8 A. There is additional information on the
9 detailed map, correct.

10 Q. Now, you've testified that the reason you
11 did this was to make everybody aware of these
12 easements and utilities; is that correct?

13 A. And I think I said that Mitch suggested that
14 I do it.

15 Q. Mitch called you and told you to submit that
16 document, didn't he?

17 A. I don't remember if he called me or not. We
18 had phone conversations several times.

19 Q. And during that conversation, he indicated
20 to you that Magruder should file an amended detailed
21 map identifying the location of those utilities;
22 isn't that correct?

23 A. I can't remember. I know that he suggested
24 that I put this on the detailed map.

25 HEARING OFFICER: Mr. McGovern, are

1 the sewer line runs right through here?

2 A. Yes.

3 Q. So in terms of all these people you're
4 trying to make aware of this which prompted you to
5 submit the amended detailed map, who are they, since
6 everyone you've just identified you wanted to inform
7 were standing on site looking at them?

8 A. Well, it's a lot easier to see on the map
9 than when you're stuck in the middle of 205 acres.

10 Q. Did you have any discussions internally at
11 Magruder that at the time you now submitted this
12 amended permit application or these documents that
13 amended your permit application that the time had
14 expired for any other petitioners to request a
15 hearing?

16 A. No.

17 Q. Take a look, if you would, at Applicant's
18 No. 19, one of the documents produced today.

19 A. Okay.

20 Q. The blasting that I guess we're going to
21 have to assume for now that this is referring to
22 would be blasting that might be required for purposes
23 of either repairing or laying additional pipe; is
24 that correct?

25 A. Correct.

1 you moving to a different topic now?

2 MR. MCGOVERN: What I was going to do
3 is get to a point here shortly where I think it might
4 be a good time to take a break, and then when we come
5 back, there is one last topic that will take a little
6 bit of time, but that will be a good breaking point.

7 HEARING OFFICER: Good.

8 Q. (By Mr. McGovern) Now, when you indicated
9 you were filing this amended detailed map to make
10 everyone aware of the easements and utilities, who
11 are you talking about? Who are the everybody?

12 A. I think on the site that day there was some
13 confusion as to the relation of the bond as it
14 pertains to the mine plan area.

15 Q. But for the people on the site, those folks
16 there who were walking on the site, those folks could
17 see the Ameren line, correct?

18 A. Yes.

19 Q. So there's no confusion about where that is.
20 Now, as to the sewer line, didn't you all walk over
21 to the area in which the sewer line was located?

22 A. Yes, but, you know, you weren't there.

23 Q. I understand. Mr. Atkisson was there?

24 A. Right.

25 Q. And didn't you all walk over and indicate

1 Q. And so what they're referring to in 3.1 is
2 the amount of charge necessary to move rock out of an
3 excavation that might be, what, 6 or 8 feet wide?

4 A. It doesn't say how wide it can be.

5 Q. Do you have any idea as to the amount or the
6 quantity of material that would be utilized or the
7 load for a blast contemplated under this section?

8 A. I think it's just not my -- it's not my
9 place to say.

10 Q. You have no idea as to what type of blasting
11 would be utilized on a project of this nature, do
12 you?

13 A. Well, to say no idea would be false. I've
14 seen pipeline blasting.

15 Q. Are you suggesting that the level of blast
16 that Magruder is going to use with respect to its
17 quarry operations is the same level of blast that
18 would be used for purposes of removing rock out of an
19 excavation on a pipe installation?

20 A. Not here to make suggestions.

21 Q. I'm not asking that. You testified
22 earlier --

23 A. You said are you suggesting.

24 Q. I'm asking you the question. You testified
25 earlier that somehow this blasting provision has some

1 relevance to this application. I'm simply trying to
2 determine what it is. And are you suggesting to the
3 Hearing Officer that the level of blast that would be
4 used for an excavation such as a pipe installation,
5 is that the same level of blast that Magruder intends
6 to use at its quarry operation?

7 A. No. I simply noted that blasting could take
8 place within 40 feet of the finished product.

9 Q. And as you sit here today, you have no idea
10 whatsoever as to what level of blast would be
11 contemplated by that paragraph, correct?

12 A. I think no idea is a stretch, but do I know
13 exactly?

14 Q. Is it the same level of blast that Magruder
15 intends to use at its quarry?

16 A. That's a question for our experts.

17 Q. Because you're not suggesting that you're an
18 expert in blasting, are you?

19 A. No, I'm not.

20 MR. MCGOVERN: This would be a good
21 time to take a break, Mr. Tichenor.

22 HEARING OFFICER: All right. Thank
23 you, Mr. McGovern. Let's take a break. Let's come
24 back at 1:15.

25 MR. MAUER: Can we go off the record?

1 what was a question regarding Applicant's 19 are
2 taken from this document that you're going to give to
3 the Hearing Officer to go into the record?

4 MR. BROWNLEE: And maps, too.

5 MR. MAUER: That's my understanding
6 of the representation from Mr. Troutwine. I know the
7 first page of the full page of conditions that Mr....
8 I don't know about the two drawings that he was
9 referring to, I'm not seeing those in the executed
10 contract.

11 MR. MCDONALD: Well, they're
12 individual documents.

13 MR. TROUTWINE: At least on the CD
14 they were --

15 MR. MAUER: That's the full page that
16 they --

17 HEARING OFFICER: This is the full
18 page?

19 MR. MAUER: Yes. And then this is
20 the full contract.

21 HEARING OFFICER: What I want to get
22 at, Mr. Mauer, this is the full copy that includes
23 this?

24 MR. MAUER: Those actually are just
25 stapled. That's one document.

1 HEARING OFFICER: We're off the
2 record.

3 (Luncheon recess.)

4 HEARING OFFICER: All right. We'll
5 reconvene. What about the documents as far as
6 Applicant's 19 and 20? Were we able to locate those,
7 Mr. Brownlee?

8 MR. BROWNLEE: Yes. We've, I think,
9 shared that information prior to going on the record
10 with Mr. Mauer, and I think we're in agreement those
11 are the documents that were sent from them.

12 HEARING OFFICER: All right. Do we
13 need to supplement 19 and 20 by the inclusion of the
14 entirety of the documents from which they came?

15 MR. MAUER: Yes. I'd like to go
16 ahead and put the documents in and I'd like to have
17 the whole documents in. And we can offer theirs or
18 ours. I will represent to you that we have a copy of
19 the executed contract agreement which has been
20 produced for the 19 -- for the 18-inch forced main.

21 HEARING OFFICER: Which would go to
22 Applicant's 19?

23 MR. MAUER: Yes, it would.

24 HEARING OFFICER: And so these two
25 documents were taken -- pardon me -- the two pages of

1 HEARING OFFICER: This is one
2 document?

3 MR. MAUER: Correct. It's just
4 stapled because the stapler couldn't go through the
5 whole thing.

6 HEARING OFFICER: But I've got this
7 as not a complete copy on the front of it.

8 MR. MAUER: Because that's the way it
9 came in.

10 HEARING OFFICER: All right. These
11 two are the complete document from which this one
12 page of 19 came from, but as far as the drawing,
13 Mr. McDonald, you are representing that was a
14 separate document provided --

15 MR. MCDONALD: When -- yeah. It was
16 a separate -- they sent a CD with all these pages.
17 Each one of those drawings is a separate document.
18 It would say, like -- the document would say, like,
19 trunk line 45 plus 0002 such and such.

20 HEARING OFFICER: All right. Well,
21 then I'm going to ask, Mr. Mauer, since you raised
22 the initial objection, if the Commission receives the
23 executed contract as Applicant's 19 which includes
24 the sketch drawing which the witness has testified
25 to, are you still objecting to this being received

<p style="text-align: right;">Page 142</p> <p>1 into the record?</p> <p>2 MR. MAUER: Until I have a chance to</p> <p>3 check with Mr. Edelman about the drawing, I can't</p> <p>4 confirm that, but as I understood the testimony, that</p> <p>5 is -- that's actually a pieced-together document</p> <p>6 that's not even a complete page. It's two pages that</p> <p>7 he's -- that the witness has put together. And so I</p> <p>8 need to talk --</p> <p>9 THE WITNESS: They're two separate</p> <p>10 documents.</p> <p>11 HEARING OFFICER: They're two</p> <p>12 separate pages which, yes, have been put together?</p> <p>13 MR. MAUER: Right.</p> <p>14 HEARING OFFICER: Which the witness'</p> <p>15 testimony explained -- I mean, we can take it apart</p> <p>16 and move it so that the line is in a continuous line.</p> <p>17 I don't think it's necessary.</p> <p>18 MR. TROUTWINE: This is how it</p> <p>19 appeared.</p> <p>20 HEARING OFFICER: They came as two</p> <p>21 separate documents. Subject to whatever you wish</p> <p>22 to --</p> <p>23 MR. MAUER: I just want to confirm</p> <p>24 with Mr. Edelman.</p> <p>25 HEARING OFFICER: Mr. Edelman is one</p>	<p style="text-align: right;">Page 144</p> <p>1 pulled one sheet of a large volume of daily</p> <p>2 construction reports?</p> <p>3 MR. MCDONALD: Right.</p> <p>4 MR. MCGOVERN: And then you attached</p> <p>5 it to one of the drawings that came within 20?</p> <p>6 MR. MCDONALD: Correct.</p> <p>7 MR. MCGOVERN: So would it be better</p> <p>8 if these were two separate documents?</p> <p>9 MR. MCDONALD: It's up to you all.</p> <p>10 MR. BROWNLEE: As long as we all</p> <p>11 understand.</p> <p>12 MR. MCGOVERN: My only point is, this</p> <p>13 has nothing to do with this other than -- I mean,</p> <p>14 this is a daily construction...</p> <p>15 HEARING OFFICER: If you all would,</p> <p>16 just hold off for a minute. Well, Mr. Mauer, let me</p> <p>17 inquire of you, are you familiar enough with these</p> <p>18 pump stations and forced main improvements? This</p> <p>19 appears to go clear beyond the subject property. Am</p> <p>20 I correct on that?</p> <p>21 MR. MAUER: Yes.</p> <p>22 MR. MCDONALD: Do we want to just</p> <p>23 turn in what we printed off?</p> <p>24 MR. BROWNLEE: Could we go off? I'm</p> <p>25 afraid the record is going --</p>
<p style="text-align: right;">Page 143</p> <p>1 of your witnesses, correct?</p> <p>2 MR. MAUER: Yes. And I didn't get it</p> <p>3 before today, Mr. Tichenor, so I'm sorry I can't tell</p> <p>4 you if I have an objection. I just haven't had a</p> <p>5 chance to talk to my client about it.</p> <p>6 HEARING OFFICER: I will allow you</p> <p>7 to -- at this point the document is being received as</p> <p>8 Applicant's 19. You will be permitted to have your</p> <p>9 witness-in-chief testify relative to it or rebut it.</p> <p>10 Now, with reference to Applicant's 20...</p> <p>11 MR. MAUER: This is a set of the</p> <p>12 drawings, and those are actually separate documents,</p> <p>13 but that's the set of drawings.</p> <p>14 MR. MCDONALD: Actually, that's all</p> <p>15 on one document there.</p> <p>16 MR. MAUER: Correct.</p> <p>17 HEARING OFFICER: This was all one</p> <p>18 document, and this is the document from which -- from</p> <p>19 which the 24-inch line from E.T. Archer came? This</p> <p>20 purports to be the pump stations and the forced main</p> <p>21 improvements, Phase 1.</p> <p>22 MR. MCDONALD: It's one of the last</p> <p>23 few pages.</p> <p>24 MR. MCGOVERN: This might help: The</p> <p>25 daily construction report, isn't this a packet? You</p>	<p style="text-align: right;">Page 145</p> <p>1 HEARING OFFICER: Let's go off the</p> <p>2 record for a moment.</p> <p>3 (Off the record.)</p> <p>4 HEARING OFFICER: Let's go back on</p> <p>5 the record. The Hearing Officer is going to take the</p> <p>6 document tendered by Mr. Mauer that is the City of</p> <p>7 Osage Beach, Missouri, Pump Stations and Forced Main</p> <p>8 Improvements Phase 1 from the E.T. Archer Corporation</p> <p>9 and determine relative to the second page of</p> <p>10 Applicant's 20 where in the document are any other</p> <p>11 pages that refer to that portion of the pipeline on</p> <p>12 the Magruder property. And this will also allow</p> <p>13 time, Mr. Mauer, for you to check with -- it's</p> <p>14 Mr. Edelman, correct?</p> <p>15 MR. MAUER: Edelman, yes, sir.</p> <p>16 HEARING OFFICER: Check with</p> <p>17 Mr. Edelman relative to what other pages in that plan</p> <p>18 might, in fact, contain information regarding the</p> <p>19 construction of the pipeline on the Magruder</p> <p>20 property. All right. With that, Mr. McGovern, I</p> <p>21 believe that you were cross-examining Mr. McDonald.</p> <p>22 You may proceed.</p> <p>23 MR. MCGOVERN: Thank you.</p> <p>24 Q. (By Mr. McGovern) Mr. McDonald, if you</p> <p>25 would take a look at least at the front page of what</p>

<p style="text-align: right;">Page 146</p> <p>1 has previously been identified as Applicant's No. 20. 2 I'm not interested in the drawings, just the 3 construction note. In your direct testimony, you 4 were talking about the various pieces of equipment 5 identified on this construction report; is that 6 correct? 7 A. Correct. 8 Q. You understand that a construction report is 9 nothing more than at least in this instance it's 10 Archer Engineers' report of what occurred on the job 11 site on a particular day, correct? 12 A. Correct. 13 Q. And this construction report doesn't in any 14 way tell us whether or not these pieces of equipment 15 that you identified either crossed over the pipes or 16 were anywhere near the pipes, does it? 17 A. Just they were on the job. 18 Q. Anywhere on the job, correct? It doesn't 19 indicate -- 20 A. It says, "Location 248 plus 40 to station 21 246 plus 50." 22 Q. You're not telling me the area down below, 23 correct? 24 A. No. I'm telling you there's two different 25 spots where it shows locations on here.</p>	<p style="text-align: right;">Page 148</p> <p>1 engineering with respect to what this berm or this 2 detention basin would look like? 3 A. We've talked about different scenarios 4 amongst ourselves, yes. 5 Q. Are there any drawings, any engineered 6 drawings, as to what this berm will look like? 7 A. No. 8 Q. Is there any adaptation about what type of 9 liner is going to be placed in the bottom of this 10 basin to ensure that the liquid isn't going to simply 11 leach back into the ground? 12 A. We have not done that yet. 13 Q. So this is just a concept; it's an idea you 14 have? 15 A. Right. 16 Q. There's been no commitment beyond general 17 conversation; is that right? 18 A. It was something we talked about today or 19 introduced today to you all. 20 Q. I understand. And prior to today, it was 21 only a matter of discussion among yourself and other 22 employees of Magruder? 23 A. It was a matter of discussion. And we had 24 put some thought into it. 25 Q. All right. But there's been no engineer</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. I understand. I'll cut right to the quick. 2 You have no idea where this equipment went on the 3 job, do you? 4 A. No. I was not there. 5 Q. Thank you. You provided some testimony 6 earlier with respect to if there is a compound break 7 in the line, which I think you've described as a 8 complete break, that Magruder is contemplating the 9 construction of a berm to collect whatever liquid 10 may, I assume, spew out of this pipe, travel along 11 the surface of the ground and then would be collected 12 in this berm; is that correct? 13 A. Yeah. We suggested that we could put a berm 14 up for collection of material, correct. 15 Q. And a berm would do nothing more than 16 collect that material and that liquid that is 17 traveling along the surface of the ground, correct? 18 A. Correct. 19 Q. That's what a berm does. You're talking 20 about constructing some sort of berm or detention 21 basin to collect the liquid that would come out of 22 the pipe and actually travel across the top of the 23 ground, correct? 24 A. Correct. 25 Q. Have you done any type of design or</p>	<p style="text-align: right;">Page 149</p> <p>1 retained, there's been no design drawings, there's 2 been no thought of putting any liner of any type in 3 the bottom of this basin; in fact, there's been no 4 expenditure of any money towards the design or 5 construction of such a berm, correct? 6 A. That is correct. 7 Q. Mr. Brownlee, I think, was going to ask you 8 a question about, well, if we don't have a compound 9 break, then I assume what we would have is what you 10 described as "you see it weekly, leaks and cracks of 11 pipe." Now, what you are referring to is a leak or a 12 crack in the pipe in which there is a release of 13 liquid below the ground, correct? 14 A. It would be a release -- just a smaller 15 release of the liquid sewage around the pipe. 16 Q. And considering that the pipe is located, I 17 think we've established, some 30 inches under the 18 ground, we can, I assume, safely believe that the 19 liquid is going to in some fashion migrate beneath 20 the surface; is that correct? 21 A. It would have to at some point. 22 Q. The berm wouldn't do anything to solve that 23 type of problem, would it? 24 A. It depends on the situation. I mean, it's 25 speculation, but very often the leak -- the way you</p>

1 know it's a leak is that it rises to the top.
 2 Q. All I'm asking you is, the berm would only
 3 take care of that liquid or material that's traveling
 4 across the surface of the ground, correct?
 5 A. That is correct.
 6 Q. And you certainly recognize that the geology
 7 around this area as well as the lake is a karst
 8 geology?
 9 A. No.
 10 Q. You don't think so?
 11 A. No.
 12 Q. Why don't you take a look again, if you
 13 would, at McGovern's Petitioners' binder. What I
 14 want to do now is we'll change topics and we'll look
 15 at the violations. I think Mr. Brownlee asked you
 16 some general questions about those. We'll just go
 17 through some of the specifics. If you take a look
 18 first at Exhibit No. 15, this document is comprised
 19 of 14 pages and is the spreadsheet, I believe, that
 20 was produced by the DNR; is that correct?
 21 A. Looks like it was probably produced by the
 22 DNR.
 23 Q. And the document itself isn't actually a
 24 14-page document, but what it is is a spreadsheet
 25 that would actually cover across the page, and it's

1 just taken out in sections; isn't that correct?
 2 A. I assume that is correct.
 3 Q. And this document would reflect not only
 4 notice of the violations issued; it would also
 5 reflect notice of excess emissions. It tells you the
 6 violation, the source, the actions, recommended
 7 action, a contact person and the address; isn't that
 8 right?
 9 A. I guess I'm not on the same page as you are.
 10 All right. Let me look through it, I guess, and
 11 maybe ask those questions individually.
 12 Q. Well, I don't want to belabor this. This is
 13 a document produced by the DNR which is at least a
 14 DNR summary of the violation history of Magruder; is
 15 that correct?
 16 A. Yeah. That seems to be correct.
 17 Q. And the spreadsheet describes different
 18 categories, some of which I described, I didn't go
 19 through all of them, that give you at least an
 20 overview of those violations; isn't that correct?
 21 A. Correct.
 22 Q. Take a look at Exhibit 16, if you would.
 23 This is notice of violation 2640SL dated May 6th,
 24 2003. Do you see that?
 25 A. Yes.

1 Q. And what facility does this reference?
 2 A. The Troy facility.
 3 Q. And this one is -- is this one of those ones
 4 you testified to earlier, one of these nine that
 5 occurred within an approximately one-year period?
 6 A. It was during that time frame, yeah.
 7 Q. Well, I thought you had indicated that was
 8 in 2002 when that happened, when those nine
 9 violations were issued.
 10 A. No. I think I said between the spring of
 11 2002 and --
 12 Q. Into 2003? Okay.
 13 A. No. I think you have to go back and look at
 14 the transcript, I guess, but I think I stated it was
 15 in '02 to the beginning of '04.
 16 Q. Now, this violation here is "Facility has
 17 not watered the haul roads as required by Special
 18 Condition No. 3 of Construction Permit 0899-032A
 19 which contributed to the cloud of dust observed over
 20 the facility from approximately 1:00 p.m. until
 21 1:30 p.m." Do you see that?
 22 A. Yes.
 23 Q. Now, you agree with me that's not a paper
 24 violation or a record keeping violation; this is a
 25 violation with respect to excessive dust; isn't that

1 correct?
 2 A. Right. It's a watering violation, yes.
 3 Q. And that would be the result of failure to
 4 water the haul roads; is that correct?
 5 A. That is correct.
 6 Q. Take a look at Exhibit No. 17, if you would.
 7 Now, this is actually a settlement agreement that is
 8 entered into between Magruder and the MDNR; is that
 9 correct?
 10 A. Correct.
 11 Q. And just for purposes of the record, the
 12 process that typically would take place is once the
 13 notice of violation is issued, the Department can
 14 determine whether or not they want to assess any
 15 fines or penalties arising from that violation; is
 16 that correct?
 17 A. Yeah, the Department or Missouri Attorney
 18 General Office.
 19 Q. Because what the DNR does is they will refer
 20 the matter over to the Attorney General's Office, and
 21 the Attorney General is then delegated with the
 22 responsibility of drafting the settlement agreements,
 23 correct?
 24 A. I assume that to be correct.
 25 Q. And this settlement agreement actually

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1 relates to the violation we just looked at in
 2 Exhibit 15, 2640; isn't that right? If you look on
 3 the top right of the NOV, it's 2640?
 4 A. I see it.
 5 Q. And if you look at the settlement agreement,
 6 it refers in the one, two, third paragraph NOV 2640?
 7 A. Correct.
 8 Q. Do you see that?
 9 A. Uh-huh.
 10 Q. And if you look at the second page of this
 11 document, the DNR recommended a civil penalty of
 12 \$4,000; however, upon payment of 2,000, the other
 13 2,000 was suspended; is that correct?
 14 A. That is correct.
 15 Q. And did Magruder actually pay that \$2,000
 16 penalty?
 17 A. I have to assume that we did.
 18 Q. Why don't you take a look at Exhibit 18.
 19 This is dated April 9th, 2003. Identifies Lincoln
 20 County. Level II State Source Inspection Form.
 21 You've seen these before, haven't you?
 22 A. Yes.
 23 Q. And this is the report that was prepared by
 24 the inspector, the environmental specialist,
 25 Mr. Patrick Dwyer, who went out to the site; is that

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1 correct?
 2 A. Yes.
 3 Q. And this indicates that the facility is
 4 being issued notice of Violation 2640, which is the
 5 one we've just been talking about, for failure to
 6 water haul roads as required by special condition.
 7 Do you see that?
 8 A. Yes, I do.
 9 Q. Now, he also notes within his report that
 10 the facility needs to modify its efficient inventory
 11 questionnaire, and you know that as DIQ, correct?
 12 A. Correct.
 13 Q. Process flow diagram, as it does not
 14 accurately reflect what is occurring at the site.
 15 Would you agree with me that that is an instance of
 16 non-compliance with the requirements?
 17 A. No.
 18 Q. And why not?
 19 A. Now, mind you this is five years ago, but I
 20 believe what he was referring to at that time was we
 21 had some additional equipment that was on the process
 22 flow diagram which we never did add and --
 23 Q. Add to the EIQ, correct?
 24 A. No. Add to the plant.
 25 Q. Okay.

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1 A. So he simply said, if you can take that
 2 off -- and I'm telling you this, just for the record,
 3 it's five years ago, but I believe that's what this
 4 referred to, that he wanted me to take that equipment
 5 off the process flow diagram so it would read more
 6 accurate.
 7 Q. Well, this was received by Air Pollution
 8 Control May of 2003, correct? Look at the top right.
 9 A. Correct.
 10 Q. All right. If you look at the second page
 11 of that document, just for purposes of the record,
 12 there is identification of the various pieces of
 13 equipment. It tells you type, and then do you see
 14 opacity?
 15 A. Correct.
 16 Q. And opacity is nothing more than the dust
 17 plume that exists at these various emission plants;
 18 isn't that correct?
 19 A. Correct. It's an observed visual opacity
 20 or, you know, emissions level, so to speak, yes.
 21 Q. The inspector actually stands at some
 22 distance and he visually looks at the emission point
 23 to determine how much of a dust plume is there, and
 24 then I understand he subjectively provides a
 25 percentage; isn't that right?

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1 A. Yeah. That's similar to how it happens.
 2 Q. And in this instance the haul road was
 3 greater than 40 percent; isn't that correct?
 4 A. He's got less than 40 percent.
 5 Q. Less than 40 percent, you're right. And
 6 what's acceptable?
 7 A. On haul roads, I believe it is 20 percent.
 8 I'd have to look it up to be sure.
 9 Q. And that was the basis of at least that NOV
 10 2640 was the opacity failure as to the haul road,
 11 correct?
 12 A. Yeah. He simply stated that it's less than
 13 40 percent.
 14 Q. Take a look at Exhibit No. 19, if you would.
 15 This is another document from the -- produced by the
 16 DNR. It's dated May 16th. There's a note, "Abby:
 17 This facility does have a number of NOV's in the
 18 past. I suggest a \$4,000 settlement offer. Thanks,
 19 Steve." Have you seen this document?
 20 A. I've not seen this right here.
 21 Q. You understand that to be a note from
 22 Mr. Steve Feiler?
 23 A. I don't know.
 24 Q. But, again, 4,000 was the suggested
 25 settlement offer regarding that NOV, correct?

40 (Pages 154 to 157)

1 A. On the past exhibit?
 2 Q. Yes.
 3 A. Yes.
 4 Q. Take a look now, if you would, at
 5 Exhibit 20. Have you seen this document before?
 6 A. I'm missing part of it on here. I mean, I
 7 can -- I assume that I have.
 8 Q. It's just a notice of violation just for
 9 identification addressed to you, QC Marketing,
 10 Magruder Limestone Company. This one is dated April
 11 12th, 2004, and has a number 0404CJ01, correct?
 12 A. 0404, yes.
 13 Q. Take a look, if you would, at Exhibit 21.
 14 Now, this is a notice of excess emissions, correct?
 15 A. Correct.
 16 Q. And if you look in the middle box, it
 17 indicates in violation of Missouri Air Conservation
 18 Commission Regulation 10 CSR-10, and then it's blank
 19 and there are two issues identified. One is
 20 restriction of emissions of visible air contaminants.
 21 The second is restriction of particulate matter to
 22 ambient air beyond the premises of origin. Do you
 23 see that?
 24 A. Yes.
 25 Q. And both of those would be issues of

1 non-compliance noted by Mr. Patrick Dwyer for his
 2 inspection dated April 2nd, 2004; is that correct?
 3 A. Yeah. They were non-compliance per him.
 4 Q. And, in fact, he identifies in the notes "An
 5 opacity reading of 61.458 percent was calculated due
 6 to the emissions from the Telsmith 4248 jaw crusher
 7 while crushing Chouteau rock. Water spray bars were
 8 not in operation." Now, the water spray bars, that
 9 is the system at least you were utilizing at this
 10 quarry to try to keep dust suppression down; is that
 11 correct?
 12 A. That is part of it, yes.
 13 Q. And those suppression or the water
 14 suppression spray bars would be located at the
 15 various emission points; is that right?
 16 A. Yeah. They're kind of strategically placed
 17 throughout the plant.
 18 Q. Typically they're at emission points on a
 19 conveyor or at a crusher, places like that; is that
 20 right?
 21 A. Correct.
 22 Q. And in this instance, or at least on this
 23 day, they were not operating; is that correct?
 24 A. I mean, that's exactly what the report says.
 25 Q. He then indicates that "I observed fugitive

1 emissions crossing the county road and drifting out
 2 across the farmer's field to the south." Now, would
 3 that be emissions traveling beyond the property
 4 boundary?
 5 A. Well, yes, according to what was written
 6 down here. At this time I remember this particular
 7 incident and I was in disagreement with this, but to
 8 answer your question, this -- yes, it states that.
 9 Q. And that's all I'm asking. This farmer's
 10 field he's referring to the south is not on the
 11 property that the quarry's located on, is it?
 12 A. No.
 13 Q. So for emissions traveling beyond the
 14 property boundary into the farm would be at least as
 15 noted by Mr. Dwyer an issue of non-compliance; is
 16 that correct?
 17 A. Correct.
 18 Q. Why don't you look at 22. This notice of
 19 excess emissions is now identified as a notice of
 20 violation; is that correct? Actually, this is
 21 different. I'm sorry. Take a look at 22. This is
 22 dated April 13th, 2004, and is another notice of
 23 excess emissions; is that correct?
 24 A. Correct.
 25 Q. And this would be a -- now a different event

1 in which the regulation noted as being a
 2 non-compliance is restriction of particulate matter
 3 to the ambient air beyond the premises of origin.
 4 All that simply means is you've got dust traveling
 5 beyond the property boundary again; is that correct?
 6 A. Yeah, beyond the premises of origin.
 7 Q. In fact, he notes in the remarks, "On
 8 April 13th, 2004, fugitive emissions were observed
 9 crossing Watson Road and drifting out across the
 10 farmer's field to the south. The fugitive emissions
 11 were extremely heavy and appeared to be drifting as
 12 far south as the Cuivre River." How far from the
 13 quarry is the Cuivre River?
 14 A. I can't accurately say.
 15 Q. Mile, two miles, three miles?
 16 A. I mean, I don't know without -- we could --
 17 we have access to that information.
 18 Q. Do you have any guess?
 19 A. I mean, I'd rather not say something I'm not
 20 sure of.
 21 Q. Can you see it from the quarry?
 22 A. Yes.
 23 Q. Would the dust have to travel across that
 24 farmer's field in order to get to the Cuivre River?
 25 A. Yes.

1 Q. Take a look at 23, if you would. This is
2 No. 2112 dated April 2nd, 2004. This one indicates
3 construction permits required. Would this be one of
4 those paper violations you were talking about?

5 A. Yeah, this would be a paper violation.

6 Q. In fact, it says, "The installation did not
7 send a notification of anticipated start-up at least
8 30 days prior to commencement of increased
9 production." Do you see that?

10 A. Yes.

11 Q. Now, it also says, "Opacity values of 20 to
12 60 percent were observed behind haul trucks on the
13 sales and pit haul roads in violation of appreciable
14 visible emissions limit." Opacity of 60 percent,
15 would that be an issue of non-compliance on the haul
16 roads?

17 A. If it was within our -- our quarry, yes. We
18 have a county road, though, we use for the sales
19 road.

20 Q. What about the pit haul road?

21 A. If it was in -- yeah, if it was in the pit,
22 then yes.

23 Q. That would be on your property?

24 A. Correct.

25 Q. And that would be subject to the permit,

1 correct?

2 A. Correct.

3 Q. And if, in fact, there was an opacity
4 reading of 60 percent, you would agree with me that
5 that exceeds acceptable limits, correct?

6 A. It exceeds the legal limits.

7 Q. Why don't you take a look at Exhibit 24.

8 This one's also dated April 2nd, 2004. This one's a
9 notice of violation. It indicates two separate
10 regulations, one dealing with operating permits and
11 the second open burning restrictions. Now, the
12 first, "The installation has not amended its
13 operating permit within 30 days after start-up of
14 Construction Permit No. 032003.032. PM10 records
15 indicate new production limit was utilized on
16 4/25/03." Do you see that?

17 A. Yes.

18 Q. Now, it also indicates the facility utilizes
19 a cage structure to burn off its trash. And you
20 understand that that is a violation of the open
21 burning restrictions?

22 A. Yes.

23 Q. And that would be an issue of
24 non-compliance?

25 A. It would be a violation.

1 Q. Take a look at No. 25, if you would. This
2 is just a document produced by the DNR. Have you
3 seen this before?

4 A. Not that I remember, no.

5 Q. It just provides a summary of those last
6 violations, those NOV's we just talked about. You've
7 not seen this?

8 A. Not that I remember.

9 Q. Okay. And if you look at the second page
10 behind that summary, this is dated Friday, April 2nd,
11 2004. It's a Level II State Source Inspection Form,
12 and if you come down to the comments, it indicates
13 what the Department's position was going to be with
14 respect to those prior violations; isn't that right?

15 A. On which page?

16 Q. I'm looking at the page -- the second page
17 of Exhibit 25.

18 A. Okay. Under the Comments?

19 Q. Yes.

20 A. Can you repeat your question?

21 Q. I was just summarizing. All that appears in
22 the Comments is sort of a summary of those prior
23 notices of excess emissions and notice of violations,
24 and the comments are telling us what the Department
25 is going to do with those; isn't that right?

1 A. Correct.

2 Q. Take a look at 26, if you would. Now, this
3 is March 10th, 2004. This indicates a violation of
4 10 CSR 10-6.170, restriction of particulate matter to
5 the ambient air beyond the premises of origin. Again
6 what's happening here is dust is traveling beyond the
7 property boundary; is that correct?

8 A. Well, no. It just says, "A white dusting
9 was observed on leaf layer in Cuivre River State Park
10 to the east." I mean, there's a gravel road that
11 runs right through the state park next to us.

12 Q. I haven't gotten to that park yet. All I'm
13 asking about is, the regulation noted relates to the
14 concept of particulate emissions or dust traveling
15 beyond the property boundary; isn't that correct?

16 A. Right. Restriction of particulate matter to
17 ambient air beyond the premises of origin.

18 Q. Now, the part you were looking at is the
19 remarks on nature violations says "A white dusting
20 was observed on leaf litter in Cuivre River State
21 Park to the east." How far is the park to the east
22 of the quarry?

23 A. Not far, but I don't know of an accurate...

24 Q. And you understand that what's referenced
25 here is a white dusting. They're talking about "A

1 white-colored dust is appearing on the leaves of
2 trees and other bushes near the Quiver River State
3 Park;" is that right?

4 A. Yeah, that's what it's indicating.

5 Q. It also indicates that "Additional
6 surveillance revealed a general plant opacity to be
7 between 60 percent and 80 percent, possibly caused by
8 a lack of water spray controlled measures. Winds
9 were to the north northwest with ambient temperature
10 of 56 degrees." A plant opacity of 60 to 80 percent,
11 is that in compliance with the permit Missouri
12 regulations?

13 A. No.

14 Q. If you look, then, at Exhibit 27, have you
15 seen this document before? And just for the record,
16 it's dated 4/20/2004 prepared by a Benjamin Marshall,
17 environmental engineer, Air Pollution Control
18 Program?

19 A. I don't remember this particular letter off
20 the top of my head.

21 Q. If you look at it, he indicates "I have
22 permit applications from Magruder Limestone and I
23 have been in discussion with Pat Dwyer." Mr. Dwyer
24 is typically your inspector, isn't he, at least at
25 the Troy plant?

1 A. No. He was during that -- he can be. He's
2 out of the St. Louis regional office.

3 Q. Right. It indicates, "Pat Dwyer and the
4 SLRO regarding Magruder's compliance problems
5 controlling fugitive emissions. I think a site visit
6 is appropriate prior to the issuance of the permits.
7 The following is a summary of my discussion with
8 Pat." If you look at the first note, March 15th of
9 '04, it indicates "Conducted requested site survey."
10 Inspector noted already out of control fugitive dust
11 problem, and the general plant opacity was 60 percent
12 to 80 percent. Fugitive dust deposits were found off
13 property to the east." And then it references that
14 NOV we just talked about. Do you have any
15 recollection as to why that happened?

16 A. Which one happened?

17 Q. On the 3/15 note, that there was general
18 plant opacity was 60 to 80 percent?

19 A. No. I mean, I -- no. That was a long time
20 ago. I remember I described earlier our scenario
21 during that time frame.

22 Q. Well, 3/23/04 note indicates -- now this is
23 referring a year prior -- "The facility had the same
24 problems last year, 5/2003, of not watering haul
25 roads. The inspector reported the rock crushing

1 plant at this site has a significant history of
2 non-compliance for dust emissions. The facility has
3 received several NOV's and NOEU's." Was there the
4 similar problem in 2003? Do you have any
5 recollection of that?

6 A. No. I mean, once again, it is stating what
7 I had mentioned earlier.

8 Q. Why don't you take a look at 28. Now, this
9 is the actual written report that was prepared
10 regarding the inspection report that took place on
11 April 2nd, 2004, right?

12 A. I'm sorry?

13 Q. I'm sorry. This is the actual report that
14 was prepared regarding the inspection that took place
15 on April 2nd of 2004; isn't that right?

16 A. Correct.

17 Q. I'm not going to go through this in detail,
18 we can look at it later, but have you seen this
19 document before?

20 A. It looks familiar.

21 Q. I want to point out to you, if you look at
22 the third paragraph, it indicates, "At noon the
23 Telsmith primary crusher in the old plant was
24 observed to have an opacity of 65.1 percent. The
25 crusher was processing shorter rock, and the water

1 spray bars were not in operation?"

2 A. Can I hold on? You're in the third
3 paragraph of the first page?

4 Q. The second page.

5 A. Okay. The third paragraph?

6 Q. Yes.

7 A. Okay.

8 Q. The report's indicating that at noon this is
9 what they observed, 61.5 percent opacity. If you
10 look at the fourth paragraph, "After returning from
11 lunch to resume the inspection, fugitive dust was
12 observed crossing Watson Road and drifting out over
13 the farmer's field to the south." Do you recall that
14 the DNR was out there conducting an inspection in
15 which violations were noted then left for lunch, came
16 back and there was still the same problem occurring?

17 A. I don't remember exactly how it happened,
18 but I'm very aware that there was an issue back then.

19 Q. If you take a look at Exhibit 29, this is
20 another settlement agreement entered into by Magruder
21 Limestone Company and the Attorney General's office;
22 is that correct?

23 A. Correct.

24 Q. And this relates to NOV -- actually, several
25 of them -- 2105, 2111, 2112 and 2113; is that

<p style="text-align: right;">Page 170</p> <p>1 correct?</p> <p>2 A. 2105, 2111, 2113. Is that the ones you</p> <p>3 listed off?</p> <p>4 Q. In fact, if you want the whole list, it's</p> <p>5 easier to go to Page 2, third paragraph, M?</p> <p>6 A. I see that.</p> <p>7 Q. That delineates the whole list, because</p> <p>8 there are others numbered a little differently,</p> <p>9 correct?</p> <p>10 A. Yeah, I see that.</p> <p>11 Q. And in this instance it's recommended that</p> <p>12 there be an \$8,000 civil penalty and that Magruder</p> <p>13 would pay 4,000; is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. And do you know if Magruder actually paid</p> <p>16 that \$4,000?</p> <p>17 A. Once again, I assume that we did.</p> <p>18 Q. If you take a look at Exhibit 30, this is a</p> <p>19 letter from you to Steven Feiler dated July 3rd,</p> <p>20 2002; is that right?</p> <p>21 A. Yes.</p> <p>22 Q. This is the only letter I found responding</p> <p>23 to these various notices of violations or notices of</p> <p>24 excess emissions or other issues of non-compliance,</p> <p>25 but in this one, your letter, you agree that the</p>	<p style="text-align: right;">Page 172</p> <p>1 the actual inspection form related to that notice of</p> <p>2 excess emissions; is that correct?</p> <p>3 A. Correct.</p> <p>4 Q. And just as a general question, if you look</p> <p>5 down at the bottom of each of these forms, the</p> <p>6 inspection forms, it will indicate there's a box</p> <p>7 where it indicates facility in compliance or facility</p> <p>8 not in compliance. Do you see that, bottom left?</p> <p>9 A. Yeah, I see it.</p> <p>10 Q. And if the facility is not in compliance,</p> <p>11 then that section is checked, correct?</p> <p>12 A. Correct.</p> <p>13 Q. If you take a look at Exhibit 34, this is a</p> <p>14 notice of violation again addressed to your</p> <p>15 attention, and this involves an issue with respect to</p> <p>16 a portable plant; isn't that correct?</p> <p>17 A. Correct.</p> <p>18 Q. And this was that the plant was not properly</p> <p>19 permitted; is that correct?</p> <p>20 A. An exact description of this is a portable</p> <p>21 plant, in order to have a portable title, has to be</p> <p>22 moved every two years. So it was simply not moved,</p> <p>23 and there should have been a letter sent in stating</p> <p>24 the plant has not moved.</p> <p>25 Q. And that wasn't done and so the notice of</p>
<p style="text-align: right;">Page 171</p> <p>1 notice of violations issued for excess emissions was</p> <p>2 appropriate. You disagree with respect to whether or</p> <p>3 not you filed the annual compliance certification</p> <p>4 report; is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. In fact, if you look at Exhibit 31, that is</p> <p>7 the notice of violation issued with respect at least</p> <p>8 Mr. Dwyer's conclusion that the facility failed to</p> <p>9 complete an annual compliance certification report;</p> <p>10 is that right?</p> <p>11 A. Right.</p> <p>12 Q. And if you take a look at Exhibit 32, this</p> <p>13 references the NOV that you do agree with, and that</p> <p>14 is 2416 dated June 26th, 2002, dealing with the</p> <p>15 crusher -- and I'm looking at the comments -- "Was</p> <p>16 observed to have an opacity of 71 percent which is</p> <p>17 above the regulatory limit of 15 percent for crushing</p> <p>18 operations;" is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. And similar to the other notice of</p> <p>21 violations issued for excess emissions based upon</p> <p>22 opacity, there's a note the water spray bars were not</p> <p>23 in operation. Do you see that?</p> <p>24 A. Yeah, I see that.</p> <p>25 Q. And if you look at Exhibit 33, this would be</p>	<p style="text-align: right;">Page 173</p> <p>1 violation was issued; is that correct?</p> <p>2 A. Correct.</p> <p>3 MR. MCGOVERN: I don't have anything</p> <p>4 further.</p> <p>5 HEARING OFFICER: Do you wish to move</p> <p>6 for the admission of 15 through 34 at this time?</p> <p>7 MR. MCGOVERN: Yes, Mr. Tichenor.</p> <p>8 HEARING OFFICER: All right.</p> <p>9 Exhibits 15 through 34 are offered into evidence.</p> <p>10 Mr. Duggan, any objection?</p> <p>11 MR. DUGGAN: No.</p> <p>12 HEARING OFFICER: Mr. Brownlee, any</p> <p>13 objection?</p> <p>14 MR. BROWNLEE: Yes. I'd object, on</p> <p>15 Exhibit 15, any of the violations outside the</p> <p>16 three-year -- five-year period would not be</p> <p>17 admissible or relevant under the statute, Section</p> <p>18 444.773. Further, I object to any of the question or</p> <p>19 testimony on any of the notice of violation issues or</p> <p>20 NEO's that were technical or paperwork violation</p> <p>21 because that statutory section requires that any</p> <p>22 basis for non-compliance must be of any environmental</p> <p>23 law administered by the Missouri Department of</p> <p>24 Natural Resources at any single facility that</p> <p>25 resulted in harm to the environment or impaired the</p>

1 health, safety or livelihood of the persons outside
2 the facility. So any of those that were internal
3 would not meet that standard. Anything outside the
4 facility. Anything that's a paperwork violation or
5 non-moving, for example, the latter one, not moving
6 the portable plant, would not be in compliance under
7 the Missouri statute. Subject to that, they're the
8 same 11 he discussed originally and I'd have no
9 objection to any of the rest of that based upon the
10 relevance.

11 HEARING OFFICER: All right. Mr.
12 McGovern?

13 MR. MCGOVERN: And I have no
14 objection to those outside of the time period.
15 Certainly he's already testified to the 11. Mr.
16 Brownlee already asked him. My questions simply went
17 to a little more of the specifics and the detail as
18 to those 11, but I certainly understand this Hearing
19 Officer and the Commission will give the weight to
20 those that it should based upon the statute.

21 I would also move -- and this is just
22 housekeeping. I'm not sure if I did this or not.
23 MP-6, I think, is admitted. I think it maybe was
24 done as a different exhibit.

25 HEARING OFFICER: It's a different

1 exhibit. It's in the record. MP-6 is in the record.
2 Let me get back to the objections that you've raised.
3 Clearly references outside the five-year statutory
4 limit. The Commission is prohibited from considering
5 those. With regard to the other objection, rather
6 than attempting to rule individually at this point in
7 time, those objections will be addressed within the
8 body of the decision.

9 MR. BROWNLEE: Fine.

10 HEARING OFFICER: As cited to the
11 statutory references. The Hearing Officer is aware
12 of that, but rather than burden the record at this
13 point with attempting to go through that, they will
14 simply be addressed in the decision. Mr. Mauer, do
15 you have any objection to Exhibits 15 -- MP-15
16 through 34?

17 MR. MAUER: No, sir.

18 HEARING OFFICER: All right. Then
19 those exhibits are received subject to the objection
20 which has been stated and the ruling stated by the
21 Hearing Officer. Mr. Mauer, you are recognized for
22 your cross-examination.

23 MR. MAUER: Thank you.
24
25

EXAMINATION

1 QUESTIONS BY MR. MAUER:

2 Q. Mr. McDonald, would you please get BP-18,
3 which is the title work exhibit?

4 HEARING OFFICER: Wait just a moment.
5 The Hearing Officer is providing a copy to the
6 witness of BP-18.

7 Q. (By Mr. Mauer) Mr. Magruder, would you
8 recognize Exhibit BP-18 as a copy of the title
9 work -- I'm sorry -- Mr. McDonald, do you recognize a
10 copy of the title work, BP-18, as information that
11 you supplied to us as part of the discovery process?

12 A. Correct.

13 Q. And this is the title work that you had
14 prepared for purposes of acquiring the proposed
15 quarry site?

16 A. Correct.

17 Q. And would you agree with me that included
18 within BP-18 are the easement -- is an easement to
19 the City of Osage Beach for location of the two
20 forced mains at issue which cross your property?

21 A. Yes.

22 Q. And so there's no dispute that there are
23 valid existing easements crossing your property for
24 the location of the two sewer lines?
25

1 A. Well, we have easements, I assume, in this
2 stack of papers.

3 Q. Okay. Thank you.

4 MR. MAUER: Your Honor, I'd offer
5 BP-18.

6 HEARING OFFICER: BP-18 is offered
7 into evidence. Any objection, Mr. Duggan?

8 MR. DUGGAN: No objection.

9 HEARING OFFICER: Mr. Brownlee, any
10 objection?

11 MR. BROWNLEE: No.

12 MR. MCGOVERN: No objection.

13 HEARING OFFICER: No objection?

14 MR. MCGOVERN: No.

15 HEARING OFFICER: BP-18 is received
16 into evidence. Proceed, Mr. Mauer.

17 Q. (By Mr. Mauer) Mr. McDonald, MP-5 is the
18 original application that you submitted to the Land
19 Reclamation Program in order to obtain approval of
20 the proposed permit, correct?

21 A. Yeah. It's the original application I sent
22 in.

23 Q. All right. Now, I want to have a -- I want
24 to make sure that I'm understanding your testimony.
25 Is it your testimony that MP-5 when it was submitted

1 in April of 2007 was fully complete and in compliance
 2 with all of the requirements as set forth by the Land
 3 Rec Program and State statutes and State regulations?
 4 A. Yes, I view it as complete.
 5 Q. All right. And subsequently you added
 6 additional bonding area; is that right?
 7 A. I amended the permit application to add 90
 8 acres additional bonding.
 9 Q. Okay. The original 10 acres is still
 10 bonded, right?
 11 A. Yes.
 12 Q. All right. And just so we're clear, if I
 13 understood your testimony, you only bonded 10 acres
 14 because bonding is expensive; is that right?
 15 A. That was one of the reasons.
 16 Q. And you didn't want to bond a bunch of land
 17 that you may not be quarrying for quite sometime.
 18 Did I understand that correctly?
 19 A. I didn't want to.
 20 Q. Is that -- was that the reason why you chose
 21 to only bond 10 acres?
 22 A. That was part of the reason.
 23 Q. All right. Because bonding is expensive and
 24 there's no sense bonding on property that you don't
 25 intend to quarry on, right?

1 A. Well, bonding's expensive.
 2 Q. And no sense bonding on property that you're
 3 not going to quarry on because then you're just
 4 wasting money, correct?
 5 MR. MAUER: I'm sorry. Did you get
 6 his answer?
 7 THE REPORTER: No.
 8 Q. (By Mr. Mauer) Your answer is?
 9 A. Bonding is expensive, yes. I don't know
 10 where...
 11 Q. Simply put, sir, do you ever intend to -- do
 12 you place bonds over top of property that you don't
 13 intend to quarry?
 14 A. Do we place bonds... Yes.
 15 Q. And so even though bonding is expensive, you
 16 go ahead and choose to put bond money over top of
 17 acreage that you're not going to quarry?
 18 A. Well, you need to bond even your stockpile
 19 areas for dirt.
 20 Q. Okay. So do you typically bond property
 21 that you're not going to utilize in any fashion,
 22 whether it be for stockpiles or quarrying, pit site?
 23 A. It's a case by case scenario. To say
 24 typically, typically we do not.
 25 Q. All right. Thank you. Let's take a look at

1 Applicant 6, and what I'll direct your attention to,
 2 this first colored --
 3 HEARING OFFICER: Applicant's 6?
 4 MR. MAUER: Yes.
 5 HEARING OFFICER: This is Applicant's
 6 6.
 7 Q. (By Mr. Mauer) Applicant's 6 has an
 8 attachment that is a colored site detailed map. Do
 9 you see this one?
 10 A. Okay. Uh-huh.
 11 Q. I think it's one page -- it's not the page
 12 you're looking at.
 13 A. Okay.
 14 Q. Yes. Do you have that?
 15 A. Yeah, I'm with you.
 16 Q. All right. Now, Applicant's 6, if you look
 17 at the first page, is dated February 5th, 2008.
 18 You're welcome to look at the first page. Do you see
 19 that?
 20 A. Sure.
 21 Q. All right. But when you look at the colored
 22 page, you'll see that it was received, the map, the
 23 detailed map we're talking about, was received by the
 24 Land Rec Program on February 1st, 2008.
 25 A. Okay. I don't see that on this one.

1 MR. MAUER: May I approach?
 2 HEARING OFFICER: Yes.
 3 A. I see it's on there, yes.
 4 Q. (By Mr. Mauer) So it was actually
 5 received... Mr. McDonald, the colored site map that
 6 we're referring to, which is the detailed map, has a
 7 date stamp or a date stamp from the Land Rec Program
 8 of February 1st, 2008, right? I just showed that to
 9 you?
 10 A. Okay.
 11 Q. But Applicant's 6 is dated February 5th,
 12 2008, correct?
 13 A. Correct.
 14 Q. Do you have any understanding of why this
 15 first map would have been received four days before
 16 the date on your letter of Applicant's 6?
 17 A. There are several reasons it could have
 18 been. Do I remember right now? No, I don't.
 19 Q. Do you recall submitting the colored
 20 detailed site map first, prior to submitting
 21 Applicant's 6?
 22 A. I mean, I'm not trying to be elusive, but I
 23 honestly do not remember.
 24 Q. Okay. Well, you testified earlier that one
 25 of the reasons why you bonded additional ground was

1 to try and demonstrate after the site visit exactly
2 what was going to be done. Was that right? Clear up
3 any sort of confusion?

4 A. No. I think I stated along the lines I
5 wanted to demonstrate that the issue at hand was the
6 mine plan area, not a bonded amount.

7 Q. Didn't I understand your testimony that part
8 of the reason for submitting Applicant's 6 was to
9 bond additional ground to eliminate any confusion
10 that may have occurred as a result of the site visit?

11 A. I did say it would eliminate confusion, yes.

12 Q. All right. And so is that why you would
13 have submitted the colored map which is dated
14 February 1st, 2008, to show the additional bonded
15 land?

16 A. The question is why -- what was the question
17 again?

18 Q. Well, it appears that the site map dated
19 February 1st, 2008, is identical to the original map
20 except that this one's highlighted to show additional
21 acres being bonded, correct? You're welcome to look
22 at MP-5, if you like, and compare.

23 A. I'm assuming that you're correct.

24 Q. All right. So the only thing that this map
25 does is show additional acres being bonded, right?

1 A. Okay.

2 Q. Is that correct?

3 A. It looks as if, yeah, there are additional
4 acres highlighted that are being bonded.

5 Q. All right. And this would have been done
6 after the site visit, right?

7 A. Yes.

8 Q. And it would have been done, then, as part
9 of your effort to clarify any confusion about what
10 area was being bonded for purposes of quarrying?

11 A. Yeah. It was just letting everyone know
12 what acres are bonded.

13 Q. All right. Now, when I look at this page,
14 the February 1st, 2008, site map, it doesn't have
15 identification of the sewer lines or the Ameren UE
16 utility lines, does it?

17 A. I guess I'm on the wrong map, because mine
18 does. Yeah, I can see yours does not and mine does.

19 Q. Where does yours show the...

20 A. (Indicating.)

21 Q. All right. So was there another map you
22 submitted, then, on February 1st, 2008? Is there a
23 third map?

24 A. I don't know.

25 Q. In any event, do you recall submitting a map

1 without still -- in February 2008 that still didn't
2 have the utility lines or the sewer lines on it?

3 A. No. I don't recall.

4 Q. Do you recall after receiving -- sending in
5 this map that Mr. Roberts or someone from Land Rec
6 Program contacted you and said, hey, look, you've got
7 to identify the sewer lines and the utility lines on
8 your map?

9 A. Well, I guess to clear things up, I don't
10 remember sending in that map. I think I've already
11 stated when I sent this one in that I'd had some
12 discussion with Mr. Roberts, if that answers your
13 question.

14 Q. I guess what I'm trying to get at is that it
15 appears from the sequence and the documents that we
16 received yesterday that after the site visit you did
17 submit a supplemental map, but the supplemental map
18 only identifies the additional bonded area and where
19 you intend to start quarrying.

20 A. I'd have to see that map again. And I --
21 you know, it could have been sent in for purposes --

22 HEARING OFFICER: Well, wait a
23 minute. For purposes of the record, the Hearing
24 Officer has compared Applicant's 6 and MP-6, both of
25 which contain a detailed map on which the Ameren UE

1 and the Lake Ozark Joint Sewer Board easements are
2 shown. There is no time stamp date on these
3 documents, but they were submitted as exhibits as the
4 entire package of the permit application amendment to
5 add the 90 acres. And so, Mr. Mauer, not
6 withstanding, I don't know -- this is what you had
7 yesterday, what we got yesterday or you got
8 yesterday?

9 MR. MCGOVERN: No. This was the one
10 we were looking for. Remember the question of
11 highlighting that didn't show up on any maps?

12 MR. MAUER: This was the one that
13 Mr. Roberts got over the break and brought in and we
14 had to color highlight.

15 HEARING OFFICER: Yeah.

16 MR. MAUER: That's what that one is.
17 And that's -- it's got the stamp of February 1st on
18 it, 2008.

19 HEARING OFFICER: I understand. What
20 I'm saying is the document that has been filed and
21 actually received into evidence has a map that does
22 not have that date stamped document -- or that date
23 stamp on the document.

24 MR. MCGOVERN: My suggestion is we
25 should mark this as a separate document because it's

1 different, which we can do it as -- however you wish,
2 but I agree with you, Mr. Tichenor, it is different
3 than the ones that had been previously produced. We
4 should identify this as a separate new exhibit.

5 MR. MAUER: BP-51 would be our next
6 exhibit number.

7 HEARING OFFICER: Let me mark it,
8 then, as BP-51. And I'm going to identify this as
9 the February 1st site map, or detail map. All right.
10 It has been so marked as Exhibit BP-51 with the
11 notation that it is -- it is not the same map that is
12 shown both in Applicant's 6 and McGovern Petitioners'
13 6. Proceed.

14 MR. MAUER: Thank you.

15 Q. (By Mr. Mauer) Okay, Mr. McDonald, now that
16 we've got that straightened out, in looking at BP-51,
17 do you recall submitting after the site visit a map
18 that simply showed the additional bonded acres and a
19 new identification on where you proposed to start the
20 quarry?

21 A. No, I don't -- are you referring to this
22 BP-51?

23 Q. Yes, I am.

24 A. No, I don't remember sending this in.

25 Q. Do you recall at some point after the site

1 visit submitting additional information and then
2 being told you have to identify the sewer line and
3 the electric line on your site map, on your detail
4 map?

5 A. I remember sending in a different map and
6 suggesting that I could put that on there.

7 Q. And you were told to do that by Mr. Roberts?

8 A. I believe, yeah. I don't know if told is
9 the right word or not, but...

10 Q. And then you have in front of you
11 Applicant's 6, and there are two maps with
12 Applicant's 6 that does show the sewer lines and the
13 utility lines on them, correct?

14 A. Where is Applicant's 6?

15 HEARING OFFICER: That's Applicant's
16 6.

17 Q. (By Mr. Mauer) Or MP-6. Is that right?

18 A. The sewer lines and the utility lines, the
19 Ameren UE lines on it, is that what you stated?

20 Q. Yes.

21 A. Yes.

22 Q. My question, sir, is, do you consider this
23 new map that identifies the lines to be a correction
24 to your original application, or is it just
25 information that you sent in?

1 A. It's an additional map that I sent in.

2 Q. Okay. Did you intend for that additional
3 map to then make your application complete?

4 A. I honestly don't recall.

5 Q. As you sit here today, is it your position
6 that your application when you submitted it was
7 complete?

8 A. Yes.

9 Q. And is it your -- so then did you need to
10 submit this additional map, which is the maps that
11 are attached to Applicant's 6, in order to make your
12 application complete?

13 A. I don't think I needed to, but once again,
14 we try to work very close with the Department, and if
15 they ask me to do something, then I'm going to oblige
16 them and do it.

17 Q. I appreciate that, sir. I'm just asking.
18 As the representative of Magruder Limestone, did you
19 intend for these maps to be a correction to your
20 application?

21 A. I don't know if I can -- I don't know if I
22 can answer that, because I don't know what I intended
23 back in February. The facts are I sent it in with
24 additional information on it. You know, I honestly
25 don't remember exactly what my intentions were at

1 that time.

2 Q. Is it your understanding as you sit here
3 today that your application has been changed to
4 reflect the Osage Beach Lake Ozark utility lines and
5 the electric utility lines? Has the map been changed
6 to reflect that information?

7 A. No, it's not been changed. It's been --
8 there's been additional information added onto it.

9 Q. And so your application -- what you
10 considered your application when you submitted it in
11 April as being complete?

12 MR. BROWNLEE: Your Honor, this has
13 been asked and answered about 20 times. I mean, I
14 just...

15 HEARING OFFICER: The witness has
16 answered the question that he feels that the original
17 application was complete. I understand, Counsel, it
18 may not be the answer you're looking for, but that's
19 the testimony of the witness. Furthermore, the
20 questions involving Applicant's 6 relate to the
21 adding of the additional 90 acres which, as I
22 understand the shaded area of the map which was
23 submitted with that, reflects the entirety of the 100
24 acres that now is bonded. The documents speak for
25 themselves. The original detailed map did not

<p style="text-align: right;">Page 190</p> <p>1 contain a reference to the Ameren UE or the Joint 2 Sewer Board easements on the map. The Hearing 3 Officer has understood that for more than two days 4 now because he's reviewed those particular exhibits 5 in detail. So the question is asked and answered. 6 MR. MAUER: Well, okay. For the 7 record, all I was trying to establish is that this 8 witness previously testified that he considered the 9 application to be complete and the additional map was 10 not intended to supplement or in any way modify the 11 original application. That's what I believe and, had 12 I been allowed to impeach him, he would have said, 13 which I think goes to the intent. 14 HEARING OFFICER: Well, Mr. Mauer, if 15 you wish to present him now the impeachment question 16 and refer him to that, I will allow you to do that. 17 MR. MAUER: Until I ask him -- my 18 understanding of impeachment -- 19 HEARING OFFICER: You had asked him 20 the question on several occasions, and he had made 21 the response. Now, if you wish to impeach the 22 witness, go ahead. Do you wish to lay the foundation 23 and impeach the witness, Mr. Mauer? I'm not trying 24 to be difficult and I'm not trying to deny you your 25 opportunity to create the record you want to create.</p>	<p style="text-align: right;">Page 192</p> <p>1 important to you. Go ahead and proceed with what it 2 was you wish to lay in this record to impeach this 3 witness. 4 Q. (By Mr. Mauer) All I want to ask, 5 Mr. McDonald, is as you sit here today, was it your 6 understanding that the application has been changed 7 to reflect the Osage Beach and Lake Ozark utility 8 lines and electric utility lines? 9 A. I'm going to say, stated that way, I don't 10 know. 11 Q. Why is it you don't know? 12 A. Repeat the question one more time. 13 Q. As you sit here today, has the application 14 been changed to reflect the Osage Beach and Lake 15 Ozark utility lines and the electrical utility lines? 16 A. Once again, I'm not trying to be -- avoid 17 the question. I honestly don't know. It's a 18 question for DNR. I mean, I can't accurately answer. 19 Q. Is it your position that it is not necessary 20 to put the utility lines and electric utility lines 21 on the map? Is that still your position today? 22 A. I interpret the Code of State Regulations 23 not to require easements to be located on the 24 detailed map. 25 Q. Thank you. So you don't have to show the</p>
<p style="text-align: right;">Page 191</p> <p>1 Q. (By Mr. Mauer) Mr. Magruder -- 2 HEARING OFFICER: This is 3 Mr. McDonald. 4 MR. MAUER: I'm sorry. My apologies. 5 HEARING OFFICER: Restate your 6 question for the purposes of impeaching the witness. 7 MR. MAUER: Thank you. 8 Q. (By Mr. Mauer) Did you intend to change the 9 application -- 10 HEARING OFFICER: Are you referring 11 to the deposition of the witness? 12 MR. MAUER: Yes. 13 HEARING OFFICER: Would you please so 14 state and be prepared to show the witness as far as 15 the deposition after you have stated where you are 16 referring to. 17 MR. MAUER: I have to ask some 18 questions to set up the impeachment. 19 HEARING OFFICER: All right. 20 Proceed, Mr. Mauer. Proceed. Handle it however you 21 want. Go ahead. 22 MR. MAUER: That's okay. I'll move 23 on. 24 HEARING OFFICER: No. Come on. 25 You've taken up this much time, it apparently is</p>	<p style="text-align: right;">Page 193</p> <p>1 utility lines? I'm not asking the easements. I'm 2 talking about the utility lines and the sewer lines. 3 A. I'm just interpreting the Code of State 4 Regulations as clear as I can. I don't -- I don't 5 know what more you want me -- I can read it like it 6 is. 7 Q. Well, all I'm saying, sir, is, you threw in 8 the qualifier easements. My question was, electric 9 utility lines, are they necessary to be added on the 10 map? 11 A. It would depend on the circumstances. 12 Q. All right. Thank you. The bonding area 13 that you've now bonded, the 100 acres, would you 14 agree with me that you have bonded over the sewer 15 utility lines? 16 A. Yeah, I bonded the area, uh-huh. 17 Q. And as you sit here today, do you intend at 18 any point in time to utilize the area encompassed 19 within the sewer utility easements? 20 A. As I sit here today, no, we probably will 21 not, but if we had 3 ton of overburden -- if DNR 22 would come out for inspection and we had, you know, 23 so much as one scoop of dirt on that easement, then 24 we would be cited if it were not bonded. 25 Q. Are you aware of anything that would allow</p>

1 you to put overburden on top of the sewer lines?
 2 A. I don't know of anything that would not
 3 allow me to go take a small amount of overburden and
 4 be in the easement area, no.

5 Q. So as you sit here today, you do intend to
 6 in one way or another utilize the sewer line easement
 7 area as part of your mine quarrying operations?

8 A. No. As I sit here today -- you're talking
 9 about something that's so long away that I'm not sure
 10 where we'll be at that time. The facts are I did
 11 bond that area.

12 Q. I want to ask you about your blast plan,
 13 Applicant's 7, please.

14 MR. MCDONALD: Is this Applicant's 7?

15 HEARING OFFICER: That's Applicant's
 16 7, yes.

17 Q. (By Mr. Mauer) Applicant's 7 is your mine
 18 and blast plan. Is it true, sir, that you don't have
 19 a written mine or blast plan for any of the other
 20 Magruder quarries?

21 A. To my knowledge, no. Our blast plans are
 22 usually not written down.

23 Q. And this one was created after the Land
 24 Reclamation Commission granted the request for a
 25 formal hearing?

1 A. It was written -- can you repeat that one
 2 more time?

3 Q. This blast plan was created after the Land
 4 Reclamation Commission granted the request for a
 5 formal hearing?

6 A. This plan was written down after the day
 7 that you listed.

8 Q. And it was done collaboratively between you,
 9 Mr. Worsey --

10 MR. BROWNLEE: It's Dr. Worsey.

11 Q. (By Mr. Mauer) -- Mr. Henderson and
 12 Mr. Mirabelli; is that right?

13 A. I believe Ron Twellman had input also.

14 Q. So the five of you provided input into this
 15 information; is that correct?

16 A. We had input on it, yes.

17 Q. Now, as for your experience in blasting, are
 18 you a certified blaster?

19 A. No.

20 Q. Have you ever -- in your training at the
 21 University of Missouri, did you receive any training
 22 in blasting?

23 A. No.

24 Q. Have you ever had any formal education or
 25 certification in blasting?

1 A. Formal? No.

2 Q. Do you hold yourself out to be an expert in
 3 blasting?

4 A. No.

5 Q. This report -- this blast plan, there is no
 6 regulatory authority that gets a copy of this to
 7 enforce it; isn't that true?

8 A. That's true.

9 Q. And, in fact, isn't it contemplated in the
 10 blast plan that there may be modifications to it once
 11 you get on site and actually start quarrying and
 12 determine that the plan needs to be modified in one
 13 fashion or another?

14 A. Well, where are you referring to?

15 Q. Well, let me just ask it this way: Isn't it
 16 true that the blast plan could be modified once you
 17 get on site and determine that what you had thought
 18 or anticipated could be done isn't going to work?

19 A. I'm sorry. Can you -- one more time. I'm
 20 just trying to answer your question correctly.

21 Q. The blast plan could be changed once you
 22 start quarrying, depending upon the conditions that
 23 you experience on site?

24 A. Technically, it could be changed.

25 Q. Now, Mr. Mirabelli and Mr. Henderson are

1 with Dyno Nobel, correct? Dyno Nobel? Did I say
 2 that wrong?

3 A. Mr. Henderson is with Dyno Nobel.
 4 Mr. Mirabelli is with Dyno Consult, which is a
 5 division of Dyno Nobel that deals strictly with
 6 consulting on blasting projects.

7 Q. Is there any requirement in State statutes
 8 or regulations that requires Magruder to utilize the
 9 services of Dyno or Dyno Consulting?

10 A. That's a question for Keith Henderson, he's
 11 the chairperson, but to my knowledge, no.

12 Q. Do you have a written contract for the
 13 ongoing services of Dyno Nobel at this site?

14 A. To my knowledge, we do not -- well, I'm
 15 going to say I honestly don't know.

16 Q. You have blasters that are certified and
 17 which you utilize at the Troy quarry?

18 A. Correct.

19 Q. Should you so choose, you could have those
 20 blasters perform services at the proposed Lake Ozark
 21 quarry?

22 A. Once again, technically, yes.

23 Q. The blast plan, were Magruder to change the
 24 operation and allow someone else to come in and
 25 operate, the blast plan would not be binding on any

1 subsequent operator, true?
 2 A. It could be if we put that in the contract.
 3 Q. The blast plan is not regulated by any
 4 authority that could enforce it against a subsequent
 5 operator, true?
 6 A. I'm sorry. Once again, please repeat it.
 7 Q. The blast plan is not regulated by any
 8 authority such that it could be enforced upon a
 9 subsequent operator?
 10 A. Yes, it is. I mean, it's enforced upon by
 11 our authority. And to assume that we would let
 12 someone come in and do whatever they want is a slam
 13 on us.
 14 Q. Other than what you may or may not put in
 15 some potential contract, there is no governing
 16 authority that could come in and supervise -- enforce
 17 this blast plan on any subsequent operator, true?
 18 A. The portions that are covered under the
 19 Missouri Blasting Safety Act would be enforced, but
 20 other than that your statement is true.
 21 Q. All right. Let's talk about the Missouri
 22 Blasting Safety Act. You said that this plan was
 23 designed to comply with the Missouri Blasting Safety
 24 Act?
 25 A. Correct.

1 Q. Would you agree, then, that the Missouri
 2 Blasting Safety Act covers the blasting that you
 3 intend to do at the proposed Lake Ozark quarry?
 4 A. Those questions really need to be addressed
 5 to our experts.
 6 Q. As you sit here today, can you offer any
 7 information to this Hearing Officer on whether or not
 8 the Missouri Blasting Safety Act applies to the
 9 proposed site?
 10 A. Yes, I think it applies to the proposed
 11 site.
 12 Q. And would it apply to the Ameren UE lines
 13 and the sewer lines that cross the property?
 14 A. I don't know how you're tying blasting into
 15 utility lines exactly.
 16 Q. Is it your understanding and belief that the
 17 Missouri Blasting Safety Act applies to the sewer
 18 lines and the electric lines?
 19 A. I'm just -- I'm not -- I don't have the
 20 Blasting Safety Act in front of me, and I am just not
 21 able to answer.
 22 Q. So you don't know?
 23 A. Not at this time.
 24 Q. So when you testified earlier about this
 25 report being designed in line with the Missouri

1 Blasting Safety Act, you're not telling this Hearing
 2 Officer that it was designed so that the lines would
 3 be protected under some requirements of the Missouri
 4 Blasting Safety Act?
 5 A. What I was telling the Hearing Officer is
 6 that portions of this design were -- of this blast
 7 plan were designed in conjunction with the rules of
 8 the Missouri Blasting Safety Act and that such things
 9 as shot patterns and amount of explosives will comply
 10 to the limits set by the Missouri Blasting Safety
 11 Act, because not just myself was involved, as I
 12 mentioned, our experts also were involved.
 13 Q. I appreciate that, sir. And since you've
 14 talked about shot patterns and loads and things, is
 15 it your understanding that the requirements of the
 16 Missouri Blasting Safety Act would apply to the sewer
 17 lines and the utility line?
 18 A. One more time.
 19 Q. Can you just read it back for me?
 20 (Whereupon, the requested portion of
 21 the record was read by the reporter as follows.)
 22 MR. BROWNLEE: Well, I'm going to
 23 object to the question as being vague. I think the
 24 confusion is it applies to, and I don't even
 25 understand what that is and I'll make that objection.

1 HEARING OFFICER: The objection is
 2 sustained. The Hearing Officer does not understand
 3 what it means that the blasting law would apply to
 4 the utility lines or the sewer lines. If you can
 5 clarify the question, Mr. Mauer.
 6 Q. (By Mr. Mauer) Is it your understanding
 7 that the sewer lines and the utility lines are
 8 structures which should be protected by the
 9 requirements of the Missouri Blasting Safety Act?
 10 A. And at this time I cannot remember.
 11 Q. So you just don't know one way or another if
 12 this --
 13 A. No. What I said was I cannot remember.
 14 Q. Complaints. You have -- you testified about
 15 receiving complaints from neighbors and others,
 16 right?
 17 A. I -- yeah. I testified that we had received
 18 some complaints.
 19 Q. And when you receive a complaint about
 20 blasting, you refer that complaint on to whoever is
 21 responsible for the blasting?
 22 A. That's a fair statement.
 23 Q. So if a neighbor at Sunrise Beach complained
 24 about a blast, you would refer that complaint to
 25 Buckley Powder who is responsible for the blasting at

1 Sunrise Beach?
 2 A. The complaint would eventually get to them.
 3 Q. Right. You're not going to take it on and
 4 address it because you're not responsible for the
 5 blasting that's done by Sunrise -- by Buckley Powder?
 6 A. No. That's not a true statement.
 7 Q. Is it your testimony that you respond to
 8 complaints about blasting rather than referring them
 9 to the blasting company?
 10 A. Well, go back and clear up take it on.
 11 Q. Respond to it.
 12 A. Okay. I guess start over. Start over,
 13 please.
 14 Q. When Magruder receives a complaint about
 15 blasting, is it your policy and practice to refer
 16 that complaint to the entity that was responsible for
 17 the blasting?
 18 A. Yes. That's part of our procedure.
 19 Q. Is it part of your procedure at the Sunrise
 20 Beach quarry to refer complaints to Buckley Powder
 21 because Buckley Powder is the entity that performs
 22 the blasting?
 23 A. That would be a portion of the procedure.
 24 Q. Is it true that you don't feel the need to
 25 investigate a complaint from Sunrise Beach because

1 Buckley Powder was hired by Magruder to perform the
 2 blasting?
 3 A. We would more than likely, if we knew of the
 4 complaint, call Buckley Powder and let them
 5 investigate first.
 6 Q. Have you received a complaint about blasting
 7 from Sunrise Beach?
 8 A. Myself, I received one -- one complaint.
 9 And I did contact Buckley Powder to further the
 10 investigation.
 11 Q. Would you take a look at BP-35.
 12 A. Okay. I've got BP-35 in front of me.
 13 Q. Is BP-35 a letter written by an attorney
 14 representing Magruder Limestone Company to Ms. Joyce
 15 Sallach?
 16 A. Yes.
 17 Q. And is this letter a response -- was this
 18 letter written in response to a complaint by
 19 Ms. Sallach that Magruder had ruptured her water line
 20 in and around the Sunrise Beach quarry?
 21 A. This letter was a response to a newspaper
 22 article that I read in the West Side Star.
 23 Q. And Ms. Sallach had complained in that
 24 newspaper article that your blasting -- that the
 25 blasting at the Sunrise Beach quarry had ruptured her

1 water line?
 2 A. No. Ms. Sallach had accused Magruder
 3 Limestone of rupturing her line.
 4 Q. With a blast?
 5 A. Correct.
 6 Q. All right. So she was complaining in the
 7 newspaper article that a blast from the Sunrise
 8 quarry had caused her water line to rupture?
 9 A. She was more than complaining; she was
 10 accusing.
 11 Q. Accusing Magruder's blast of having done it?
 12 A. Correct.
 13 Q. All right. And in response to that
 14 information, you contacted your lawyer and had your
 15 lawyer write a letter to Ms. Sallach, BP-35?
 16 A. Well, in the first response, we tried
 17 looking her phone number up and was unable to look
 18 her phone number up and then turned it over to our
 19 attorney.
 20 Q. So the first thing that Ms. Sallach received
 21 from you, the first communication on behalf of
 22 Magruder, was BP-35?
 23 A. Correct.
 24 Q. And in this letter, second paragraph, your
 25 attorney is saying that "Magruder may have a cause of

1 action against Ms. Sallach for slander," right?
 2 A. Correct.
 3 Q. So at least in the case of BP-35, this is
 4 one where you didn't simply refer it to Buckley
 5 Powder; you actually referred it to your attorney?
 6 A. Well, this was not a complaint that was
 7 called in to us. This was a very different issue
 8 than a complaint called in to us or someone trying to
 9 make us aware of a problem. This is a person who --
 10 who is stating claims in a newspaper that are
 11 unsubstantiated.
 12 Q. Unsubstantiated because it was never proven
 13 that the blast ruptured her water line?
 14 A. Unsubstantiated for several reasons.
 15 Q. Would that be one of them?
 16 A. At the time -- yeah. She had not proven nor
 17 contacted us nor contacted Buckley Powder at the time
 18 and had no substantiated proof that we had done
 19 anything outside the realm of good blasting or within
 20 legal -- outside of legal limits.
 21 Q. Would you agree with me that it is difficult
 22 to prove that blasting causes damage to structures
 23 outside of the quarry area?
 24 A. Well, it's a speculative question. I...
 25 Ask it again. I'll try to answer it.

1 Q. Would you agree with me that it's difficult
2 to prove that blasting causes damage to structures
3 outside of the quarry area?

4 A. No, I would not agree with you.

5 Q. Would you agree with me that it would be
6 difficult to prove that a water line broke caused by
7 blasting as compared to shifting of the ground, age
8 of the pipe, it just wore out?

9 A. I'm not in a position to say.

10 Q. Would you agree with me that at least as far
11 as Magruder's experience, despite all of -- any of
12 your complaints, you've never actually paid on a
13 single claim?

14 A. Magruder Limestone has not paid out on a
15 blasting claim.

16 Q. All right. Let's talk about the sewer
17 lines. You testified earlier about this idea of
18 constructing a berm. Do you remember that?

19 A. We offered it up for a suggestion, yeah.

20 Q. The sewer lines run adjacent to a wet
21 weather stream, correct?

22 A. Correct.

23 Q. If a line would burst and the sewage would
24 get to the surface, it would flow down into the
25 streambed as it then headed to the river, correct?

1 A. I mean, we'd have to go out there and look
2 at the site.

3 Q. The streambed is the lowest point in the
4 area, isn't it?

5 A. It's the lowest point in between those
6 hills.

7 Q. And so from the sewer line, if it's going to
8 run downhill, it's going to run to the streambed and
9 then down towards the river, correct?

10 A. It's possible.

11 Q. Now, if you're going to construct a berm
12 that's going to contain a sewer break, you're going
13 to have to construct a berm that also deals with that
14 wet weather stream?

15 A. Correct. And I mentioned that.

16 Q. And in order to do that, your proposal was
17 that you'd have a gate? Is that right?

18 A. Some sort of assembly there, whether it be
19 a -- there are several different types of gates, for
20 a better term, that can be used in that situation,
21 correct.

22 Q. And how would the gate be operated?

23 A. There's several different ways. I can give
24 you -- do you want me to just give you one example?

25 Q. Sure.

1 A. You could have a gate that is 48 inches
2 around that could be turned to open and turned to
3 close.

4 Q. Manually?

5 A. Could be either way you wanted.

6 Q. Do you have in your design of this berm,
7 have you calculated how the sewage would be contained
8 as it runs down the streambed before someone knows
9 that the line has burst so we can turn the gate?

10 A. Repeat one more time, please.

11 Q. In your proposed berm, have you designed a
12 plan so that the sewage would be contained as it runs
13 down the streambed before someone knows it and can
14 get out to the berm to change the gate and close it?

15 A. I believe what I testified to was that these
16 were ideas that we would be willing to do in
17 conjunction with the Sewer Board if the desire was
18 there, that we have not drawn up plans or drawings
19 yet.

20 Q. Are you aware of any sort of automatic or
21 electronic system that could sense the presence of
22 sewage such that it would automatically close the
23 gate to contain the spill before it got past the berm
24 and someone could -- rather than somebody manually
25 knowing about it and getting out there and closing

1 the gate?

2 A. Am I aware? No. Do I think it's possible?
3 It probably is.

4 Q. Have you calculated the size that this berm
5 would have to be in order to contain the amount of
6 sewage that might be coming out of the lines?

7 A. Yes.

8 Q. And how big do you believe it would have to
9 be?

10 A. 6 feet tall -- it depends on how far --
11 going out there and shooting elevations, but, for
12 instance, an olympic-sized swimming pool holds a
13 third of the sewage you're talking about in one day,
14 and dimensions -- I'd have to go back and look, but,
15 you know, if you had a -- if you had a 3-foot -- say
16 a 6-foot berm, 328 long and backed it up 84 feet, it
17 would be approximately 1.2, 3 million right there.

18 Q. Gallons?

19 A. Gallons.

20 Q. So do you have any idea if the DNR would
21 approve a permit that would dam up the sewage?

22 A. I'm not aware of a permit we need to place a
23 berm on our bonded area.

24 Q. You haven't calculated whether or not you
25 need a berm in order to -- a permit in order to

1 potentially close up that wet weather stream?
 2 A. Repeat that, because you said calculated.
 3 Just clear that up, please.
 4 Q. You're not aware of whether or not you need
 5 a permit in order to put a berm and dam up that wet
 6 weather stream?
 7 A. It's just -- but we wouldn't be damming it
 8 up.
 9 Q. Are you aware of whether or not you'd need a
 10 permit in order to create an impoundment intended to
 11 contain sewage?
 12 A. I guess at this point we'd have to
 13 investigate it further. It's a suggestion we
 14 offered.
 15 Q. Have you done any calculations of what it
 16 would cost to place a liner underneath the existing
 17 sewage lines so that if they break, the sewage is
 18 going to go to the surface as compared to going
 19 underneath the ground and running along the sewer
 20 line past the berm?
 21 A. No.
 22 Q. So we're clear, Eolia Development has
 23 different owners than Magruder Limestone?
 24 A. Well, they have a similar owner, Mark
 25 Magruder.

1 Q. Mark Magruder is the sole owner of Eolia
 2 Development, correct?
 3 A. Correct.
 4 Q. He is not the sole owner of Magruder
 5 Limestone Company?
 6 A. No.
 7 Q. Is that correct?
 8 A. Correct, he is not the sole owner, to the
 9 best of my knowledge.
 10 Q. So there is different ownership of Eolia
 11 Development and Magruder Limestone Company?
 12 A. There are -- there is similar ownership.
 13 Q. There is a common owner, but it is not
 14 identical?
 15 A. I think we've sent all this to you, and I
 16 guess I don't know where you're going.
 17 Q. I realize you have sent it to me, sir. It's
 18 not in the record. I have to put it in the record.
 19 A. Okay.
 20 Q. I'm trying to establish that Eolia
 21 Development and Magruder Limestone Company have
 22 different ownership interests.
 23 A. I don't know the exact percent ownership of
 24 Magruder Limestone.
 25 Q. But you know there are owners other than

1 Mark Magruder?
 2 A. I believe at this time there are.
 3 Q. All right. And Eolia Development is not a
 4 subsidiary or in any way owned by Magruder Limestone
 5 Company, true?
 6 A. I can't answer these questions.
 7 Q. Would you please turn to MP-28.
 8 A. Okay.
 9 Q. If I understood your testimony, your
 10 testimony was that you had these violations in 2003,
 11 2004 because you were trying some new chemical
 12 process and spent a lot of money on it, but it didn't
 13 work?
 14 A. That was part of my testimony.
 15 Q. All right. Well, I read through MP-28, the
 16 summary of the violations and the findings and the
 17 conclusions, and I didn't see anything in there about
 18 your efforts to put in this chemical process or the
 19 attempts to spend a lot of money to prevent these
 20 violations. Did I miss it, or is it not in there?
 21 A. It's not in here. There was a letter sent
 22 stating the -- if I remember correctly, there is a
 23 letter that recognizes that we were indeed trying to
 24 use a chemical sort of suppression system.
 25 Q. A letter by who?

1 A. I can't remember. They were aware of the
 2 issue.
 3 Q. In any event, they didn't give you any
 4 credit for it or refer to your efforts in MP-28?
 5 A. I haven't read the whole thing, but if
 6 you're saying they did not, I'm going to assume that
 7 you're correct.
 8 Q. When you selected the proposed Lake Ozark
 9 quarry site, you then engaged Dr. Worsey to evaluate
 10 how you could go about utilizing the site; is that
 11 right?
 12 A. Well, we engaged Dr. Worsey as an additional
 13 expert.
 14 Q. Did you ask Dr. Worsey to evaluate any other
 15 potential sites for a quarry in and around Lake
 16 Ozark?
 17 A. Not that I can remember.
 18 Q. And so what you did was you said,
 19 Dr. Worsey, this is the site, how can we go about
 20 utilizing it, as compared to saying, these are
 21 several sites, which one do you think would be the
 22 best?
 23 A. I don't think -- your wording is confusing,
 24 but I don't think we asked him how to utilize our
 25 site. We asked him for his expert advice on what we

1 were planning on doing.
 2 Q. When you submitted your application for the
 3 Lake Ozark quarry in April 2007, you were familiar
 4 with the steps and the paperwork that was required in
 5 order to submit an application?
 6 A. I was familiar with it.
 7 Q. You had done enough of them by then, you
 8 knew what was required?
 9 A. Well, I had done some in the past, correct.
 10 Q. The protection of the sewer lines, is it
 11 true that Magruder does not have an insurance policy
 12 that names the City of Osage Beach, the City of Lake
 13 Ozark or the Joint Sewer Board as additional insureds
 14 should there be damage to the sewer lines?
 15 A. We don't even have a permit yet.
 16 Q. So the truth -- the correct answer is you do
 17 not have any such insurance policy?
 18 A. As of right now we do not have the Sewer
 19 Board named as an insured. The site is on our
 20 insurance plan, though.
 21 Q. As I understand your testimony, you believe
 22 Magruder Limestone Company to be safety conscious and
 23 a good corporate citizen, right?
 24 A. Yes.
 25 Q. And you do recognize that this is a 100-year

1 permit, correct?
 2 A. Yes.
 3 Q. Is there any way that you can guarantee the
 4 City of Lake Ozark and the City of Osage Beach that
 5 for the life of this 100-year permit the owners or
 6 operators of the quarry are always going to have the
 7 same intentions as Magruder Limestone?
 8 A. I don't think the permit requires a
 9 guarantee.
 10 Q. So the answer is no?
 11 A. I'm just stating the fact the permit does
 12 not require a guarantee.
 13 Q. I appreciate that. I'm just trying to move
 14 through this. Is the answer to my question no?
 15 A. To answer your question, I don't know.
 16 Q. Do you remember giving your deposition under
 17 oath?
 18 A. Yes.
 19 Q. Let me show you your deposition, Page 117,
 20 Line 21. When you were under oath in my office, did
 21 I ask you this question and did you give this answer:
 22 "So even though today you believe Magruder Limestone
 23 Company is safety conscious and a good corporate
 24 citizen, is there any way you can guarantee the City
 25 of Lake Ozark and the City of Osage Beach that for

1 the life of this 100-year permit the owners are
 2 always going to have the same intentions?" And was
 3 your answer "No"?
 4 A. Correct.
 5 Q. Thank you. Is it true, sir, that you're not
 6 aware of any other quarry site that has a sewer
 7 line -- and I'm not talking about a little feeder
 8 line or residential line, I'm talking about a main
 9 trunk line, a 12-inch diameter line or bigger --
 10 running through the quarry site?
 11 A. I'd have to check on Capital Quarries.
 12 They're in a similar situation.
 13 Q. Page 143, Line 23.
 14 A. Okay. Page 143, Line 23?
 15 Q. 23.
 16 A. Okay. Go.
 17 Q. Did I ask you this question and did you give
 18 these answers: "Are you aware -- set aside the APAC
 19 Hudson Hollow site. Are you aware of any other
 20 quarry site that has a forced main sewage treatment
 21 lines running through it?" Answer, "Strictly forced
 22 main sewage or pipeline?" Question, "Yes, at this
 23 time." Answer, "No."
 24 A. Right. And at that point I have tried to
 25 contact some other sources since then just to check

1 on this sort of thing.
 2 Q. Now, I believe you testified about the
 3 crossing of the sewer lines. Is it true that at this
 4 point in time you don't have any plan in place for
 5 how you're going to cross those sewer lines?
 6 A. We have a plan. I think we told you we had
 7 a plan if and when we cross the sewer line, we would
 8 have an engineer construct a way to cross it. I
 9 consider that a plan.
 10 Q. Please turn to Page 100.
 11 A. (Complies.)
 12 Q. Line 6. Did I ask you this question and did
 13 you give this answer: "So as you sit here today, do
 14 you have a plan in place for how you're going to
 15 cross the sewer lines?" Answer, "No." Was that your
 16 testimony, sir?
 17 A. Well, and I think you were referring to a
 18 written plan in place, and I did testify to that.
 19 Q. Is that what you testified? Did I read it
 20 correctly and was that your sworn testimony under
 21 oath?
 22 A. Right.
 23 Q. Thank you.
 24 A. You said, do you have a plan in place. You
 25 asked awhile ago do we have a plan.

1 Q. Do you have any knowledge or information
2 that the lines when they were designed were built or
3 intended to withstand the weight of a quarry truck or
4 quarry equipment?

5 A. There was heavy equipment running on them at
6 the time of construction, but no, I don't have any
7 firsthand knowledge.

8 Q. Did you ever personally observe any heavy
9 equipment driving over top of the sewer lines during
10 construction?

11 A. No. I wasn't there during construction. I
12 don't know how they could not have.

13 MR. MAUER: Move to strike.

14 Non-responsive.

15 HEARING OFFICER: Strike as
16 non-responsive.

17 Q. (By Mr. Mauer) I want to go back to
18 something to make sure I'm clear with respect to
19 Dr. Worsey. Was your task to Dr. Worsey to evaluate
20 this quarry site and design a plan to prevent damage
21 to the sewer lines?

22 A. That was a portion of his task.

23 Q. Have you instructed any of your foremen or
24 your head superintendent to report to the DNR any
25 instances of non-compliance?

1 A. Our foremen and superintendents would report
2 to myself and other upper -- well, other individuals.

3 Q. I appreciate that, sir. Mr. McGovern went
4 through a series of notices of violations or -- and
5 things involving dust. Do you remember that?

6 A. Yes.

7 Q. All right. Now, my question is, if your
8 superintendent or foreman is out at the quarry site
9 and they see too much dust being emitted outside of
10 the quarry, have you instructed them to contact the
11 DNR that, hey, we have committed a violation?

12 A. If they see dust outside of the quarry, have
13 they been instructed to call DNR?

14 Q. To self-report a violation, yes, sir.

15 A. They've been instructed not to let dust
16 outside the property line and to control dust, and
17 that is heavily enforced since the time of '04.

18 Q. Let me try my question again. I'm sorry if
19 I wasn't clear. All I'm trying to ask, sir, is if
20 you have instructed your foremen and your
21 superintendents at your quarry sites to self-report
22 instances of non-compliance.

23 A. No, they are not instructed to call DNR.

24 Q. You mentioned in your testimony other
25 utility lines that may be close to quarry operations,

1 and I believe you talked about gas lines. Do you
2 remember that?

3 A. Correct.

4 Q. Do you know the construction of gas lines as
5 compared to the 18-inch PVC pipe at issue in this --
6 one of the pipes at issue in this matter?

7 A. Do I know... Ask it again, please.

8 Q. Sure. Let me try it this way: Do you know
9 if the high pressure gas lines are welded steel?

10 A. I don't know at this point.

11 Q. Do you know the construction of any of the
12 lines that you talked about in comparison to the
13 construction of the sewer lines at issue here?

14 A. I know they have similarities. Do I know
15 the exact construction? No.

16 Q. The lines that you mentioned, do you know
17 what depth they were constructed at, these other
18 lines?

19 A. I know in a couple of the instances that the
20 elevations of the shots were below the depth of the
21 pipe.

22 Q. I appreciate that, sir. My question is, do
23 you know the depth at which they were constructed at?

24 A. Do I know the exact depth to the inch? No,
25 I don't.

1 Q. Do you know the bedding material that was
2 utilized for any of those pipes?

3 A. No.

4 Q. Do you know the age of those pipes?

5 A. No.

6 Q. The blast plan assumes an assumption --
7 assumes a production of about 300,000 tons a year; is
8 that right?

9 A. Can I see that again?

10 Q. Well, I got the 300,000 -- I don't
11 particularly care about the blast plan, but the
12 300,000 tons, as I understood it, that's what you
13 propose is -- and expect to be the annual production?

14 A. If I remember correctly, during our
15 conversation it was an estimate of the average over
16 20 years, something along that line.

17 Q. And that's how you -- utilizing that rate is
18 how you said it's going to be ten years before we
19 ever finish off this hill and get to crossing the
20 sewer lines, right?

21 A. It was based on that information.

22 Q. And did you attend the deposition of Mark
23 Magruder?

24 A. Yes.

25 Q. Do you recall Mr. Magruder testifying that

1 that 300,000 number was just picked out of the air?
 2 A. I recall Mark Magruder wasn't there when we
 3 designed the plan.
 4 Q. I appreciate that. Do you recall his
 5 testimony that Mark Magruder said the 300,000 number
 6 was picked out of the air?
 7 A. No, I don't.
 8 MR. MAUER: If I could have a moment
 9 to look at my things, I may be done, but if you want
 10 to go on for recross, I don't want to slow things
 11 down, if I can just look while we do that.
 12 HEARING OFFICER: Let's take a --
 13 let's be back at 25 minutes 'til when we will
 14 complete your cross and then go back to the recross.
 15 We're off the record.
 16 (Brief recess.)
 17 HEARING OFFICER: We're back on the
 18 record. Mr. Mauer, you're recognized to conclude
 19 your cross-examination.
 20 MR. MAUER: Yes.
 21 Q. (By Mr. Mauer) Applicant's 19, please.
 22 MR. MCGOVERN: Is that the one we
 23 added today? It's not going to be in there.
 24 HEARING OFFICER: Oh, I'm sorry.
 25 That's the one we added today. Wait just a moment.

1 Applicant's 19.
 2 MR. MCDONALD: I have it.
 3 MR. MCGOVERN: It was the excerpt out
 4 of the contract.
 5 MR. MCDONALD: I got it.
 6 Q. (By Mr. Mauer) The provision that you
 7 testified earlier in Applicant's 19 is 3.1 Blasting;
 8 is that right?
 9 A. Correct.
 10 Q. And Mr. McGovern already asked you questions
 11 about this. I want to follow up just a little bit.
 12 The 40 feet would be within the finished work,
 13 correct?
 14 A. Correct.
 15 Q. And you understood that this was for the
 16 construction of the 18-inch sewer main, right?
 17 A. Correct.
 18 Q. And you understand that until the sewer line
 19 was complete, there wouldn't be any sewage in it,
 20 right?
 21 A. Correct.
 22 Q. So even in the event that there was a blast
 23 and it damaged the line, it wouldn't cause an
 24 environmental problem like blasting and disrupting an
 25 active sewer forced main, true?

1 A. Right. This line is empty.
 2 Q. All right. So it's not similar to the
 3 situation where if the lines are blasted today and
 4 get damaged, the concern is not the same, correct?
 5 A. No. It's simply stating that blasting can
 6 take place in any form or fashion with any -- within
 7 40 feet of finish work.
 8 Q. All right. Would you please look at BP-27?
 9 Actually, if you can have 27, 28, 29, 30, 31 and 32.
 10 HEARING OFFICER: Starting what,
 11 BP-20 --
 12 MR. MAUER: 27 to 32.
 13 A. BP-20...
 14 Q. (By Mr. Mauer) 27 to 32.
 15 A. Is that referencing MSHA?
 16 Q. Yes. These are the MSHA violation
 17 citations. Do you remember seeing these at your
 18 deposition?
 19 A. I remember seeing something very similar, if
 20 not the same, yes.
 21 Q. And BP-27 is a report of the MSHA violations
 22 for the Ashley quarry, correct?
 23 MR. BROWNLEE: Your Honor I'm going
 24 to object at this time to any reference to MSHA
 25 violations. Under the Missouri statutes 444.773.4 --

1 HEARING OFFICER: Wait just a moment.
 2 444.773.
 3 MR. BROWNLEE: .4.
 4 HEARING OFFICER: I'm there.
 5 MR. BROWNLEE: It requires a
 6 Petitioner advocating for denial of a permit based on
 7 past non-compliance to show multiple non-conformance
 8 of environmental laws administered by the Missouri
 9 Department of Natural Resources. MSHA laws are not
 10 regulated or enforced by the Missouri Department of
 11 Natural Resources, and therefore any questioning
 12 regarding MSHA violations is irrelevant under
 13 Missouri statutes.
 14 MR. MCGOVERN: It doesn't say
 15 enforced. It says any laws administered by the MDNR.
 16 My position on this -- and Mr. Mauer can certainly
 17 raise his own argument -- is that if, in fact, there
 18 is an MSHA violation which would also constitute a
 19 violation under those laws administered by the MDNR,
 20 then it would constitute, I would believe, an
 21 instance of non-compliance. It doesn't say they have
 22 to be enforced by the MDNR; it just has to be a
 23 violation of a law administered by the DNR.
 24 HEARING OFFICER: Let me see the
 25 exhibit, please. Mr. Mauer, a response to the

1 objection?

2 MR. MAUER: Mr. McGovern already
3 covered it, your Honor. For purposes of this
4 examination, this witness has already identified them
5 in his deposition. I wasn't going to belabor it. I
6 was simply going to have him identify them here, we
7 can put them into evidence, and then we can argue to
8 what extent they're worth.

9 HEARING OFFICER: Well, the objection
10 is the relevance to come into evidence. Looking at
11 looks like about the first, second, third, the fourth
12 page over, I see a list of standards, for example,
13 56.12008 and subsequent numbers under -- that's under
14 the Code of Federal Regulations, is it not,
15 Mr. Mauer?

16 MR. MAUER: Yes.

17 HEARING OFFICER: And you are
18 purporting that those violations listed there, each
19 and every one of them would be violations that
20 although -- although not under the -- under the
21 compliance authority of the Department of Natural
22 Resources would be violations as stated by Mr.
23 McGovern that would be acts of non-compliance?

24 MR. MAUER: They could be, yes, sir.

25 HEARING OFFICER: I didn't ask if

1 they could be, sir. I need a foundation.

2 MR. MAUER: My foundation is that --

3 HEARING OFFICER: That those Federal
4 Codes of State Regulations, that each and every one
5 of the citations in each and every one of these
6 exhibits which reference that constitute a
7 non-compliance as per the objection Mr. McGovern has
8 made which you've adopted?

9 MR. MCGOVERN: The argument. I
10 didn't object.

11 HEARING OFFICER: Well, the argument.
12 Pardon me. Correct. The argument in response to the
13 objection.

14 MR. MAUER: I believe so, yes.

15 HEARING OFFICER: You've gone and
16 looked at these -- these sections?

17 MR. MCGOVERN: So to be clear on my
18 argument, I am not suggesting every single item
19 noted, just as I didn't suggest with respect to each
20 of the NOV's, because some of the NOV's which we have
21 introduced include violations of non-reporting but
22 the same NOV deals with particulate emissions
23 traveling beyond property boundary. And I think the
24 way we resolve that is those will be looked at that
25 are consistent with the statute and those that are

1 not. All I'm pointing out with respect to the
2 objection is the statute doesn't say only those
3 instances of non-compliance enforced by the DNR; it
4 says administered by the DNR. The same statute goes
5 on to look at the laws promulgated by the United
6 States Environmental Protection Agency in a --

7 HEARING OFFICER: Mr. McGovern, are
8 you representing to this Hearing Officer and to the
9 Land Reclamation Commission that these sections of
10 the Federal Code are administered by the United
11 States Environmental Protection Agency?

12 MR. MCGOVERN: No. These are MSHA
13 provisions. They are enforced by MSHA.

14 HEARING OFFICER: Exactly. Let me
15 put it to you this way: Have you randomly checked
16 any of these standards so that you can point me to
17 standards that are what you purport in response to
18 the objection non-compliance?

19 MR. MCGOVERN: I don't think you mean
20 standards. You're referring to any of the violations
21 noted?

22 HEARING OFFICER: Yeah. I've got a
23 violation noted under Standard 56.12008. Can you
24 tell me what that standard is?

25 MR. MCGOVERN: Not as we sit here

1 right now, no, but I can tell you I have looked at
2 some of the violations noted -- and I can't point to
3 one right now -- that are consistent and would
4 constitute an act of non-compliance under rules
5 administered by the MDNR. As I sit here right now,
6 can I point to one? No, I can't.

7 HEARING OFFICER: It's the Hearing
8 Officer's review of random standards found none. The
9 Hearing Officer did not review them all, but the
10 Hearing Officer randomly pulled those -- pulled
11 standards up, and I could find none that would
12 qualify as an act of non-compliance under the
13 administration of DNR. The objection is going to --
14 the objection is sustained. If, Mr. McGovern, you or
15 Mr. Mauer are prepared to point out specifically
16 those standards that you believe qualify as an act of
17 non-compliance under the Missouri statutes --

18 MR. MCGOVERN: And, I'm sorry, just
19 so I'm clear --

20 HEARING OFFICER: -- we will revisit
21 it.

22 MR. MCGOVERN: I understand. I'm not
23 referring to the standard noted. What I'm referring
24 to is the actual conduct that is identified as
25 constituting the violation, is the argument I'm

<p style="text-align: right;">Page 230</p> <p>1 trying to make, not that there is a regulatory 2 standard that matches up to a Missouri DNR standard. 3 HEARING OFFICER: No. I'm not saying 4 that. 5 MR. MCGOVERN: As long as we 6 understand what my position is. Fair enough. 7 HEARING OFFICER: Simply the fact 8 that there are these acts of non-compliance do not 9 equate to acts of non-compliance under this on the 10 face of those standards cited, again, of the ones 11 that I randomly -- so the objection is sustained. 12 MR. MCGOVERN: And I understand your 13 ruling until such time that we can present that to 14 you. Fair enough. 15 HEARING OFFICER: Anything further, 16 Mr. Mauer? 17 MR. MAUER: Nothing further at this 18 time. 19 HEARING OFFICER: All right. Mr. 20 Brownlee, we're ready for any redirect. I'm sorry. 21 Have you crossed? I thought I started with you on 22 recross. 23 MR. MAUER: He was first. 24 HEARING OFFICER: I started with you 25 on cross. We finished cross.</p>	<p style="text-align: right;">Page 232</p> <p>1 200 factor? 2 MR. MCGOVERN: I'll object just to 3 leading. I don't mind it generally speaking, but if 4 he's going to testify, that was not at all what the 5 questions were, nor were they the answers, and the 6 record will reflect that. He testified that it was 7 approximately a one-year time period. 8 HEARING OFFICER: The testimony 9 according to my notes -- and I'm not going to ask the 10 reporter to go back -- was that it occurred during a 11 period between 2002 and 2004, which at the most could 12 encompass three years, at the least a year and a 13 half, according to my rough calculation. That is 14 my -- that's my notes. I checked my notes. He 15 testified 2002 to 2004. 16 MR. MCGOVERN: I'll refer to the 17 record. 18 HEARING OFFICER: Okay. Let's leave 19 it at that. 20 Q. (By Mr. Brownlee) There was a question 21 regarding your experience, I believe, with new 22 permitting, do you recall that, as opposed to an 23 expansion? 24 A. Correct. 25 Q. Have you ever done new permitting for</p>
<p style="text-align: right;">Page 231</p> <p>1 MR. DUGGAN: Yes, we did. 2 HEARING OFFICER: So I'm going to go 3 back to redirect and then recross. 4 MR. BROWNLEE: I'll try to get 5 through this real quick. 6 HEARING OFFICER: Please do. 7 EXAMINATION 8 QUESTIONS BY MR. BROWNLEE: 9 Q. Regarding Mr. McGovern's questions on the 10 NOV's and the computations you made of work days and 11 everything, are you familiar with that question? 12 A. Yes. 13 Q. If you recall, he suggested that in the one 14 and a half years of violations you received nine 15 violations; is that correct? 16 A. Correct. 17 Q. And that was over a 200-day computation? 18 A. Right. That's what he stated. 19 Q. Is 200 days one and a half years or 20 one year? 21 A. 200 days would be one year. 22 Q. So the violations occurred over a year and a 23 half, correct? 24 A. Correct. 25 Q. So that would be a 300 factor instead of a</p>	<p style="text-align: right;">Page 233</p> <p>1 Magruder? 2 A. Not that I remember, no. 3 Q. Is there a reason for that? 4 A. Every permit -- every permit that we would 5 have applied for would have been an expansion permit. 6 I'm assuming based on the fact that we've had a 7 permit since the beginning, it would be to expand on 8 the existing permit. 9 Q. There were questions about the 50-foot 10 set-back and good neighbor. Is there any mention in 11 the Land Reclamation laws to you about good neighbor 12 policies? 13 A. Not that I'm aware of. 14 Q. There were questions on the utilization of 15 the -- the plat map to identify adjacent landowners. 16 You testified -- I think you said something the plat 17 map that you were able to obtain, how old was it? 18 A. If I remember without it being in front of 19 me, I testified that the map I sent in, the plat map, 20 was a 2003 edition. 21 Q. Was that the most recent you could obtain? 22 A. That was the most recent -- I believe it was 23 the most recent I could obtain. 24 Q. So the map at that point was four years old? 25 A. Correct.</p>

<p style="text-align: right;">Page 234</p> <p>1 Q. Then you also were, I think, asked a 2 question about the rock in that area being karst 3 topography, and you said absolutely not. Have you 4 had a chance or an expert to discuss this issue? 5 A. Yeah. I have recently discussed it in depth 6 with Dr. Worsey. 7 MR. MAUER: I'm sorry, your Honor. 8 MR. BROWNLEE: Okay. I'll tie that 9 in. 10 Q. (By Mr. Brownlee) Aside from discussing it, 11 have you personally observed the rock in the quarry 12 area? 13 A. Yeah. I've walked the entire 205 mine plan 14 area. 15 Q. And can you describe what karst rock is 16 compared to the other rock that's here? 17 A. I can go into some detail on karst 18 topography. Karst topography would be sink holes, 19 places where water would flow alone -- flow and then 20 disappear into an underground cavern, cave, instances 21 such as that. 22 Q. Did you find any evidence of karst 23 topography on the entire 205-acre site? 24 A. No. 25 Q. I'm going to hand you very quickly what</p>	<p style="text-align: right;">Page 236</p> <p>1 April 2nd, 2004; April 2nd, 2004; April 12th, 2004; 2 April 13th, 2004. 3 Q. And of the total 11, how many of those 4 occurred within a two-month period? 5 A. Six. 6 Q. And what was the reason again for those 7 violations occurring at that site? 8 A. That was a period of time where our chemical 9 dust suppression system failed. 10 Q. Now, you were asked again whether there were 11 any guarantees involved in the 100-year process or 12 guarantees damage. Do you know whether there are any 13 guarantees mentioned in any of the DNR or Land 14 Reclamation laws? 15 A. As I stated earlier, I'm not aware of any 16 guarantee in the Land Reclamation Act or the State 17 regulations. 18 Q. And you were asked about the sewer line in 19 the quarry, and I think you mentioned other than 20 Hudson Hollow, correct, I mean, a sewer line going 21 through a quarry site? 22 A. Right. Correct. 23 Q. Okay. A permitted site? 24 A. Correct. 25 Q. And the Hudson -- the permitted -- the line,</p>
<p style="text-align: right;">Page 235</p> <p>1 we've marked -- 2 MR. MCGOVERN: Is this new? 3 MR. BROWNLEE: Yeah. 4 Q. (By Mr. Brownlee) -- Exhibit 18. That's 5 the one we skipped. And ask if you can identify 6 that? 7 A. It appears to be the violation history of 8 all of our quarries. Just the violation history of 9 all of our quarries since June -- 10 Q. Is there a time period involved? 11 A. June 26th, 2002. 12 Q. And recognizing that's not the complete 13 documents that Mr. McGovern went through, are these 14 essentially the actual violations that were received? 15 A. Correct. 16 Q. And examining that -- and, again, these 17 reflect everything, I believe, that Mr. McGovern 18 covered in terms of the NOV's, the numbers, they 19 match. Of those total 11, how many of them occurred 20 at Troy? 21 A. Nine violations occurred at Troy. 22 Q. And how many of those nine occurred within a 23 two-month period that you've earlier testified to? 24 And just give the dates, if you will. 25 A. Okay. March 10th, 2004; April 2nd, 2004;</p>	<p style="text-align: right;">Page 237</p> <p>1 the sewer line in question, goes through the 2 permitted Hudson Hollow site, correct? 3 MR. MCGOVERN: Objection. That's 4 already been excluded from this hearing. 5 MR. BROWNLEE: Well, they raised the 6 issue about -- 7 MR. MCGOVERN: Nobody mentioned 8 Hudson Hollow. 9 MR. BROWNLEE: It was mentioned in 10 this record. It said except for, except Hudson 11 Hollow. 12 HEARING OFFICER: I know it was 13 mentioned, and it's still irrelevant. 14 MR. BROWNLEE: Okay. 15 Q. (By Mr. Brownlee) Finally, the very last 16 question on this 3.1 reference and AP-19 within 17 40 feet of the finished work, the blasting? 18 A. Correct. 19 Q. You understand that 40 feet is 40 feet 20 within PVC pipe, correct? 21 A. Correct. 22 MR. BROWNLEE: Thank you. 23 HEARING OFFICER: Nothing further? 24 MR. BROWNLEE: No. I want to offer 25 18. I'm sorry.</p>

<p style="text-align: right;">Page 238</p> <p>1 HEARING OFFICER: 18 is offered. Any 2 objection to 18? 3 MR. MCGOVERN: I'm going to object to 4 simply the summary pages of Exhibit 18. There's no 5 foundation he prepared it, nor is there a need for a 6 summary considering that each of the actual NOV's in 7 their entirety are attached. I don't object to 8 Exhibit 18 provided the summary is removed. 9 HEARING OFFICER: Mr. Mauer, 10 objection? 11 MR. MAUER: Join. 12 MR. BROWNEE: What do you mean the 13 summary is removed? 14 MR. MCGOVERN: I don't need a summary 15 of the NOV's submitted when the actual -- 16 HEARING OFFICER: The Hearing Officer 17 will check the summary against the actual NOV's. Any 18 discrepancies, the ruling document will be the actual 19 NOV's and not the summary. The exhibit is received. 20 Mr. Duggan, recross? 21 MR. DUGGAN: None. 22 HEARING OFFICER: Thank you, sir. 23 Mr. McGovern, recross? 24 25</p>	<p style="text-align: right;">Page 240</p> <p>1 currently being reclaimed, the face of those high 2 walls. 3 Q. Do any borings on the site? 4 A. Yes. We did boring in the very beginning. 5 Q. How many? How many borings did you do? 6 A. A lot. We did it along with two retired 7 State geologists that were there with us. 8 Q. How many did you do? Do you have any 9 recollection at all? 10 A. Do I remember exactly? 11 Q. Approximately. 12 A. On the hill on the -- in the mine plan -- in 13 the hill that we're proposing to start on, we 14 probably did somewhere around ten. 15 Q. And how many others did you do outside of 16 the area where you intended to start the mine? 17 A. We did a few more on the west side of the 18 property closest to Wood River Road. 19 Q. So ten in the area where you intended to 20 begin and a few others? Is that two or three over by 21 Wood River Road? 22 A. Yeah. A few. I don't remember the exact 23 number. 24 Q. Of the various quarries operated by Magruder 25 over the last five years, are you aware as to how</p>
<p style="text-align: right;">Page 239</p> <p>1 EXAMINATION 2 QUESTIONS BY MR. MCGOVERN: 3 Q. Mr. McDonald, you indicated you went out to 4 the site and you tested or inspected the site to 5 determine if there was karst geology; is that 6 correct? 7 A. Correct. Myself and Dr. Worsey walked the 8 site. 9 Q. And what testing did you do to determine if, 10 in fact, the sub-surface conditions would constitute 11 karst geology? 12 A. Well, with his expertise and his background 13 in karst topography, we walked the area, noted 14 physical characteristics in the formations that we 15 could see. We looked for such items as sink holes. 16 And he'll -- he'll be able to attest to more of this 17 than I will. 18 Q. I'm asking what you did. We'll address 19 Dr. Worsey when he's here. 20 A. I walked the entire area. I looked for 21 karst features. I also examined the high wall that 22 is in between our quarry proposed site and the sewage 23 plant. We also examined road cuts where rock is 24 exposed in the cut. And we also examined the APAC 25 quarry that is just across the Osage River that is</p>	<p style="text-align: right;">Page 241</p> <p>1 many inspections have taken place? 2 A. Not at this time. 3 MR. MCGOVERN: I don't have anything 4 further. 5 HEARING OFFICER: Mr. Mauer, recross? 6 MR. MAUER: Nothing further. 7 HEARING OFFICER: All right. That 8 concludes the testimony of the witness. The Hearing 9 Officer does have a couple of questions. 10 EXAMINATION 11 QUESTIONS BY HEARING OFFICER: 12 Q. Have you calculated the elevation of the 13 floor of the proposed quarry as the product is 14 elevated? Do you understand what I'm saying? The 15 elevation of the floor that's going to remain after 16 you've quarried the rock. 17 A. I guess let me -- I'll tell you what we have 18 done. You can tell me whether it answers the 19 question. 20 Q. All right. 21 A. We are going to start approximately 6 or so 22 feet above the existing floor now. 23 Q. Existing floor what? 24 A. We need to be 6 feet above where our plant 25 site is and then mine that horizontal straight</p>

1 across.

2 Q. And what will that elevation -- or have you
3 calculated what that elevation will be in relation to
4 the two sewer lines?

5 A. Right. We are going to be -- our floor will
6 be above the two sewer lines, the floor of our --

7 Q. Have you calculated how far above -- how far
8 above grade? And when I'm speaking grade -- let's
9 make sure you and I are speaking grade the same
10 thing. The grade to me is simply the top flow of the
11 land.

12 A. It's going to come out very close, if not a
13 small amount above grade, but the grade at the lowest
14 point does kind of dip down like this. The floor of
15 the quarry will stay above grade of the -- the grade
16 of the grass on the sewer line. Does that help?

17 HEARING OFFICER: Do you wish to
18 cross on that point? Mr. Duggan, do you wish to
19 cross on what I've inquired?

20 MR. DUGGAN: No.

21 HEARING OFFICER: Mr. McGovern?

22 EXAMINATION

23 QUESTIONS BY MR. MCGOVERN:

24 Q. Just so I understand. This might help: If
25 you look at Exhibit 19 that had the diagrams

1 attached?

2 A. Okay.

3 Q. As I understood your testimony, this is a
4 side view of where the -- of what the elevation of
5 the pipe is; is that correct?

6 A. Yes.

7 Q. In fact, if I look at the far right, that
8 will give me a mean sea level of the elevation of
9 the -- not only the existing grade but as well as the
10 pipe below it; is that correct?

11 A. Okay. I'm sorry. Do what?

12 Q. If I look on the far right column -- well,
13 you've hooked these together, but --

14 A. I might have the wrong one.

15 HEARING OFFICER: No. You have it.
16 On the end is that...

17 A. Okay. I see it.

18 Q. (By Mr. McGovern) I'm having a hard time
19 reading these numbers, but I'm guessing typically on
20 that far right side there's going to be the mean sea
21 level; is that correct?

22 HEARING OFFICER: The Hearing Officer
23 is handing to the witness what are the exact
24 documents out of the pump station and forced main
25 improvements plan.

1 Q. (By Mr. McGovern) On the far right side on
2 the schematic on the drawing --

3 MR. MAUER: I'm sorry. I need to
4 clarify and help. I think the drawing out of the
5 pump station plans would be Applicant's 20, not 19,
6 which is what Mr. McGovern is holding.

7 HEARING OFFICER: Good point.

8 MR. MAUER: Just so we don't get them
9 confused. One's the 18-inch line, one's the line
10 forced.

11 HEARING OFFICER: As I read it, the
12 elevations are on the left side of the --

13 MR. MCGOVERN: On 20 they are, I
14 agree. And, in fact, those are bigger, so I can see
15 those.

16 HEARING OFFICER: All right.

17 Q. (By Mr. McGovern) If you go to the far left
18 end of that diagram, I've got existing grade depicted
19 by a dashed line; is that correct?

20 A. Correct.

21 Q. And then below that I've got the pipe which
22 begins at approximately we'll say 659 feet mean sea
23 level; is that right?

24 A. Yeah. That's not on our property, though.

25 Q. Then if we take it down to where your

1 property begins, what would be the approximate
2 elevation? Is that around the 630 feet?

3 A. Correct.

4 Q. And so I understand your answers to Mr.
5 Tichenor's questions, using this, then, as the
6 diagram, where would the base of the quarry be in
7 relation to the 630 feet mean sea level elevation of
8 the pipe as depicted in this diagram? And what I'm
9 asking, Mr. McDonald, is, I think you indicated that
10 the floor of the quarry, so the depth that you intend
11 to go, is going to be at an elevation equal to or
12 above the current elevation of the pipe.

13 A. That's correct.

14 Q. As it traverses this property.

15 A. Correct.

16 Q. If you could help me with that, the
17 difference between the existing grade and the pipe in
18 that area is only about 10 feet. Is the depth of the
19 quarry only going to be 10 feet?

20 A. No. I think you're reading this wrong.

21 This is existing ground line.

22 Q. Right.

23 A. Of that -- of that area through there.

24 Q. Right.

25 A. And then the hill starts up. Do you see

1 what I'm saying? I think you're reading it wrong.
 2 Q. Is the hill depicted on this diagram?
 3 A. No.
 4 Q. Okay. So the area you were talking about is
 5 somewhere else?
 6 A. (Nods.) Right. It's clearly marked on our
 7 topo maps.
 8 Q. Will you be doing any mining anywhere in the
 9 area identified on Exhibit 20?
 10 A. I know you're trying to ask a legit
 11 question, but you've got to realize, this is a
 12 cross-section.
 13 Q. I understand.
 14 A. It's not... I mean, I can't really
 15 accurately answer that. This is a cross-section
 16 view.
 17 HEARING OFFICER: It's a
 18 cross-section of the easement.
 19 THE WITNESS: It's a cross-section of
 20 the pipeline.
 21 HEARING OFFICER: Well, the pipeline
 22 is in the easement.
 23 A. Well, I mean, no -- but this is just --
 24 Q. (By Mr. McGovern) But doesn't this --
 25 unless I'm reading this wrong, it shows me this is

1 from Station 262 to Station 238, correct?
 2 A. Correct.
 3 Q. And each station is 100 feet?
 4 A. Correct.
 5 Q. So this is giving me a cross-section of, you
 6 know, the section of pipe that goes through a good
 7 portion of this property, doesn't it?
 8 A. No. This is a section of pipe that goes
 9 through all of our property.
 10 Q. Right.
 11 A. This would be -- as you're looking at
 12 this -- and I just want to make this clear.
 13 Q. Go ahead.
 14 A. I would be sitting down -- I would be
 15 sitting down in the stream and looking onto it just
 16 like a cross-section.
 17 Q. Right.
 18 A. Okay.
 19 Q. And all I'm asking is, is -- well, maybe we
 20 can ask it this way and it will help me understand
 21 your answer; to what depth is the floor of the quarry
 22 going to be at its lowest point?
 23 A. Well, at our -- right now I can't answer
 24 that question. We're going to keep the floor above
 25 the pipeline, and if it requires, you know, two

1 different -- two different floors --
 2 Q. Then you may have to bench it?
 3 A. Yeah. And we mentioned benching in our
 4 blast plan. Is that clear?
 5 HEARING OFFICER: It's clear for my
 6 purposes.
 7 Q. (By Mr. McGovern) It is now. It wasn't
 8 before?
 9 A. I'm sorry.
 10 MR. MCGOVERN: That's all I have.
 11 HEARING OFFICER: All right. Mr.
 12 Mauer, any questions on that point I raised?
 13 MR. MAUER: Nothing further.
 14 MR. BROWNLEE: Just one
 15 clarification.
 16 EXAMINATION
 17 QUESTIONS BY MR. BROWNLEE:
 18 Q. On this map or cross-section Mr. McGovern
 19 was referencing, the far right would be towards the
 20 sewer plant?
 21 A. Correct.
 22 Q. That's the lowest elevation of the site.
 23 That's the keen sense of the obvious, but --
 24 A. Right.
 25 MR. BROWNLEE: Okay. I just wanted

1 to clarify.
 2 HEARING OFFICER: All right. That
 3 concludes the witness' testimony subject to, as Mr.
 4 Brownlee indicated earlier, he may wish to recall.
 5 You are dismissed.
 6 MR. MCDONALD: Thank you.
 7 HEARING OFFICER: It's ten after
 8 4:00. Is your witness here, Mr. Mauer?
 9 MR. MAUER: Yes, he is.
 10 HEARING OFFICER: Are we ready to go?
 11 MR. MAUER: There are a couple of
 12 exhibits we wanted to get admitted.
 13 HEARING OFFICER: I'm sorry.
 14 Mr. Mauer, yes, what...
 15 MR. MAUER: I'm assuming -- I don't
 16 know that Applicant's 7 is in. He did discuss it.
 17 HEARING OFFICER: Wait just a moment.
 18 Let me check. Applicant's 7 has been identified by
 19 Mr. McDonald. Are there any objections to
 20 Applicant's 7 coming in? Seeing no objections,
 21 Applicant's 7 is admitted into evidence. What other
 22 ones, Mr. Mauer?
 23 MR. MAUER: BP-35.
 24 HEARING OFFICER: BP-35. That was
 25 testified to, again, by Mr. McDonald. Any objection?

1 That's the letter from the attorney regarding the
 2 ruptured water line. Any objection --
 3 MR. BROWNLEE: I'm going to just make
 4 an objection on relevance, but...
 5 HEARING OFFICER: Objection on
 6 relevance? I'll take it as it goes more to the
 7 weight. I'm not sure as to that, but the BP-35 is
 8 admitted into evidence. Anything further, Mr. Mauer?
 9 MR. MAUER: No. I think that's it.
 10 HEARING OFFICER: All right. At this
 11 time Mr. Mauer is recognized to begin presentation of
 12 the Joint Board's case, and Mr. Mauer, call your
 13 first witness, please.
 14 MR. MAUER: Joint Sewer Board calls
 15 Mr. Rick King.
 16 HEARING OFFICER: Mr. King, will you
 17 come forward to be sworn.
 18 RICHARD KING,
 19 of lawful age, produced, sworn, and examined on
 20 behalf of the Petitioner, deposes and says:
 21 EXAMINATION
 22 QUESTIONS BY MR. MAUER:
 23 Q. Please state your full name for the court
 24 reporter.
 25 A. Richard C. King.

1 Q. What's your address, Mr. King?
 2 A. Number 90 Arrow Ridge Road, Brumley,
 3 Missouri 65017.
 4 Q. What's your current employment, sir?
 5 A. I work for the City of Osage Beach.
 6 Q. And what is your position for Osage Beach?
 7 A. Public Works Superintendent.
 8 Q. How long have you held that position?
 9 A. I've been the Public Works Superintendent
 10 since about the year 2000.
 11 Q. Did you work for the City of Osage Beach
 12 prior to becoming the superintendent?
 13 A. I did.
 14 Q. And for how many years have you worked for
 15 the City of Osage Beach?
 16 A. Just over 14 years.
 17 Q. And in what capacity have you been employed
 18 by the City of Osage Beach? What are your jobs?
 19 A. I began there, I was in charge of operating
 20 the sewer collection system, the treatment -- or the
 21 lift stations, pressure lines and gravity lines.
 22 Q. And did your duties change when you became
 23 the Superintendent of Public Works?
 24 A. Yes. I took over the responsibilities of
 25 also running the water system, Street Department,

1 Parks Department.
 2 Q. Since you began with the City 14 years ago,
 3 have you always been responsible for the City sewer
 4 system?
 5 A. Yes.
 6 Q. Prior to working for the City of Osage
 7 Beach, did you have any employment working for or in
 8 conjunction with a sewage treatment system?
 9 A. Yes.
 10 Q. And could you describe that for Mr.
 11 Tichenor, the Hearing Officer, please.
 12 A. I started working for a municipality in
 13 September of 1974. My responsibilities were the
 14 Sewer Department at that time. I operated sewage
 15 treatment facilities and the lines that were the
 16 collection system.
 17 Q. What city was that?
 18 A. St. Clair, Missouri.
 19 Q. And how long -- were you with St. Clair
 20 starting in 1974 for how long?
 21 A. Until my -- the end of 1993 I went to work
 22 for the City of Osage Beach.
 23 Q. So since 1974 have you been working for
 24 municipalities involving their sewage treatment
 25 systems?

1 A. Yes, sir.
 2 Q. What's your highest degree of formal
 3 education?
 4 A. High school. Graduated from high school.
 5 Just -- I did technical training with the Department
 6 of Natural Resources, and I have a certification for
 7 both water and wastewater from the Department of
 8 Natural Resources.
 9 Q. What does your certification in wastewater
 10 allow you to do, sir?
 11 A. There are varying levels of wastewater
 12 operators licenses that test for and are certified by
 13 the Department of Natural Resources, and I hold an A
 14 license, which is the highest license that the
 15 Department of Natural Resources recognizes in the
 16 state, and that allows me to operate treatment plants
 17 at the highest level in the state of Missouri.
 18 Q. Is there other training that you've received
 19 during the course of your employment since 1974 on
 20 how to operate a sewage treatment system?
 21 A. Yes. To maintain a certificate with the
 22 Department of Natural Resources, you have to have
 23 30 hours of training on a three-year rotation for
 24 each certificate that you hold. I've also had
 25 various technical training through Missouri Rural

1 Water Association, American Public Works Association
2 and various short courses.

3 Q. Based on your training and experience, are
4 you familiar with potential problems to a sewage
5 treatment system if a line should rupture?

6 A. Yes.

7 Q. All right. We'll talk about some of those
8 things later, but your training, experience and years
9 of work in the industry have qualified you to testify
10 about problems that can occur if a sewer line is
11 broken?

12 A. I have made a lot of repairs of various
13 degrees over the years, yes.

14 Q. All right. We're going to talk about some
15 of those. I have -- we've got two maps here. One
16 has already been identified.

17 MR. MAUER: I don't know that it
18 has -- this is one of yours, Brian. Do you remember
19 the number?

20 MR. POLHEMUS: Is that MP-1.

21 HEARING OFFICER: The Hearing Officer
22 recognizes it as MP-1 from the March hearing.

23 Q. (By Mr. Mauer) Can you describe for the
24 Hearing Officer what MP-1 shows with respect to the
25 City sewer lines and the Joint Sewer Board's sewage

1 Q. And are there two lines that run through
2 that property?

3 A. There are two lines running parallel.

4 Q. And then you mentioned over here there are
5 some red lines at the bottom of the map in the
6 corner. Is that the City of Osage Beach sewer system
7 or at least a little portion of it?

8 A. A very small portion.

9 Q. All right. You can be seated again. Can
10 you describe for Mr. Tichenor the topography of where
11 the sewer lines sit as compared to the sewage
12 treatment plant elevation-wise?

13 A. I don't have the exact elevation difference,
14 but it's quite a drop from the top down to the
15 treatment plant.

16 Q. And you said the top. Looking at MP-1,
17 where basically is the top of the hill where the
18 lines begin to flow down towards the river?

19 A. Well, it would be up by D Highway up here.

20 Q. And is that the very bottom of MP-1 where we
21 see the development in the roadway?

22 A. Yes.

23 Q. And describe for Mr. Tichenor the topography
24 from the sewage treatment plant down to the river.

25 A. Well, from the treatment plant down to the

1 treatment plant? And you're welcome to stand up and
2 show him.

3 A. Well, this would be the sewage treatment
4 plant in this area right here. And I need to put my
5 glasses on.

6 HEARING OFFICER: That's fine, sir.
7 I understand.

8 A. These show the lines that go through this
9 property into the treatment plant. This area here is
10 the main aeration of the treatment plant. These are
11 the sludge holding basins. And this would be the
12 river, the Osage River. The City of Osage Beach's
13 system will come down this area and goes across into
14 this system.

15 Q. (By Mr. Mauer) And so that we have a clean
16 record, you've referenced at the top of MP-1 the blue
17 river. Is that the Osage River?

18 A. Yes.

19 Q. And then in the middle of MP-1 is the sewage
20 treatment plant?

21 A. Correct.

22 Q. And then in the red line, is that the City's
23 forced main lines that run through the Magruder
24 property?

25 A. That's correct.

1 river is another huge -- it's downhill. I do not
2 have the elevations in front of me, but it's a very
3 steep incline down to the river.

4 Q. Is there anything -- any sort of reservoirs
5 or impediments to stop flow from the sewage treatment
6 plant down to the river?

7 A. No.

8 Q. Just in general, if there were sewage
9 flowing out of the sewage treatment plant, is there
10 anything that currently exists that would stop it
11 from hitting the Osage River?

12 A. No.

13 Q. If the line were to rupture on the Magruder
14 property, is there anything that currently exists
15 that would stop the sewage from flowing down the hill
16 past the sewage treatment plant and into the river?

17 MR. BROWNLEE: Your Honor, I'm going
18 to object. This requires speculation and assuming
19 evidence and facts that are not in record. If it's a
20 total compound break is one issue, if it has a leak
21 is one issue, and he's asked if there's anything that
22 might stop it. If it lasted four minutes, it might
23 never reach the river. So I think it's just
24 speculative and he's really not qualified, I just
25 don't believe, to answer that question the way it's

1 worded.

2 HEARING OFFICER: Well, first of all,

3 relative to his qualifications, the Hearing Officer

4 has had enough information put on the record, very

5 much similar to Mr. McDonald, that for purposes of

6 this limited testimony of his -- of Mr. King's

7 knowledge concerning the operation of the Osage Beach

8 waste treatment facility the Hearing Officer is going

9 to consider that he has expertise in that area to

10 offer conclusions and offer opinions.

11 Notwithstanding the breadth of the question that Mr.

12 Mauer asked, you may cross-examine him relative to

13 the matter. And so restate your question, Mr. Mauer,

14 and then Mr. King, you may respond.

15 Q. (By Mr. Mauer) Mr. King, all I'm trying to

16 establish is the geography and the topography and the

17 elevation of the area. If the lines were to break

18 and sewage were to flow on the surface towards the

19 sewage treatment plant, is there anything that

20 currently exists that would stop that sewage from

21 reaching the river?

22 A. No, sir.

23 Q. And I want to have you talk about the actual

24 City sewer system, and I'm going to ask you, if you

25 would, to stand up over here so you can show Mr.

1 Tichenor what we're looking at.

2 MR. MAUER: And, John, what number?

3 MR. POLHEMUS: That's BP-22.

4 Q. (By Mr. Mauer) I've shown you a map that

5 we've identified as BP-22, and I ask if you could

6 tell Mr. Tichenor, what is BP-22?

7 A. This is actually a map that we've produced

8 out of my office. We are currently in the process of

9 doing GIS and locating all of our system.

10 Q. And what is GIS, please?

11 A. Well, it's global positioning to -- so we

12 can relative to where we're at in the world identify

13 all components of our system. This is the treatment

14 plant. These are the mains that come up -- the two

15 sewer mains that come up to D road. If you'll notice

16 these little square boxes in here that have PS on

17 them, those are pumping stations. The darker green

18 square boxes that have LS on them are lift stations.

19 And you'll see these -- I've got a few of them

20 scattered on here just so that you can get an idea of

21 how this system works. The lift station, the LS that

22 we call lift stations, would be the larger stations,

23 from a 15 horse on up. The smaller stations we call

24 PS, pumping stations, would be from a 2 horse on up

25 to a 15.

1 Q. And when you say 2 horse, are you talking

2 about a 2 horsepower engine?

3 A. Yes.

4 Q. And would that be the size of the pump

5 that's utilized in the station?

6 A. That's correct.

7 Q. And so the lift stations are bigger. Can

8 you describe -- maybe it would help if you start at

9 the end of one of the lines, and let's use one down

10 here at the far end and describe how the lift station

11 and the pump stations work and trace the sewage

12 through on how it's going to flow ultimately to the

13 sewage treatment plant.

14 A. Okay. We come out into an area like this

15 and we would have several homes that would gravity

16 feed into a small station, and that small station in

17 turn would pump up to a larger station that can --

18 Q. Would that larger station be a lift station,

19 then?

20 A. A lift station. And the lift station then

21 would carry that on to a larger lift station on down

22 the line to even a bigger lift station on over to a

23 very, very large lift station that would in turn

24 carry that on this main -- or actually two mains that

25 come through down to the plant. So as an example,

1 this particular lift station here would have five 200

2 horsepower pumps in it capable of 6,000 gallons a

3 minute on this particular line.

4 Q. The line that you're referring to, is that

5 the 24-inch line that was added in the early 2000's?

6 A. That's correct, this is the 24.

7 Q. And is that the line that ultimately runs

8 all the way through the Magruder property to the

9 sewage treatment plant?

10 A. Both of those do. The 24 does run through

11 there also.

12 Q. So the line that you were just referring to

13 to Mr. Tichenor is the 24-inch line or at least the

14 beginning point of it?

15 A. Yes.

16 Q. All right. Please continue.

17 A. This system, we would have areas out in here

18 that would go to this main trunk line, areas in here

19 that would go to the main trunk and all over this

20 entire system. And to get an idea, on this

21 particular map I've put 148 of these stations, the

22 green dots, the green squares, to kind of show you

23 how it lays out. There are 1,000 of them missing off

24 of here, because if I put them all on here, we would

25 just have one big green blob. You wouldn't be able

1 to see what was going on. But the intention was to
2 try to show how the system lays out. This entire
3 area comes to this major Lewis station here and pumps
4 through this 24-inch down here. The majority of this
5 end of town ties into this what we'd call is an
6 18-inch that comes on down through here.

7 MR. BROWNEE: Excuse me again. Your
8 hand was over where you were pointing. I'm sorry.
9 This is kind of hard to follow. If he could get the
10 24 to where it started and then the 18. I'm sorry.

11 Q. (By Mr. Mauer) So we're clear on the
12 record, the middle of your BP-22, is that the Grand
13 Glaize Bridge?

14 A. It is.

15 Q. So to the west of the Grand Glaize bridge
16 where we see the red lines, is that the city limits
17 of Osage Beach?

18 A. Yes.

19 Q. And that western part of town, which sewer
20 line serves the western part of town?

21 A. All that would ultimately come through the
22 24-inch. A small amount of this area would also go
23 into the 24.

24 Q. The 24-inch line basically begins at where
25 east of the Grand Glaize bridge?

1 A. At this point where that LS square box is,
2 right there at Passover Road.

3 Q. And that's where the 24-inch line begins,
4 then, and diverts the sewage through a series of
5 mains until it ultimately ends up at the sewage
6 treatment plant?

7 A. That's correct.

8 Q. All right. Now, east of the Grand Glaize
9 Bridge is -- what serves most of the City of Osage
10 Beach boundaries? Is that the 18-inch line?

11 A. It changes from 12 to 16 to 18 as it goes.
12 As the stations pump into it more and more volume,
13 the line gets larger and larger and the velocities
14 increase. So there are -- as I stated before, there
15 are approximately 1,000 stations missing off of this
16 map, green boxes. These smaller pump stations all
17 will pump to a larger lift station, and all lift
18 stations are of varying sizes depending on the
19 capacity needs in those areas. And what it pumps,
20 again, what part of the system it's in, what kind of
21 head pressure it's seen and what kind of volumes it
22 needs to pump.

23 Q. Please sit down. I have some questions for
24 you about these lift stations. I'm really familiar
25 with gravity flow systems. Is there any significant

1 part of the Osage Beach sewer system that's gravity
2 flow?

3 A. Well, we have approximately nine miles of
4 gravity line.

5 Q. Okay. How many lines, sewer lines, miles of
6 sewer line do you have?

7 A. I have around 140 miles of pressure line and
8 about nine miles of gravity.

9 Q. So the vast majority of your lines is
10 pressure line?

11 A. That's correct.

12 Q. What happens when one of the -- let's start
13 with a pump station, all right, one of the smaller
14 pump stations. What happens when one of those pump
15 stations goes out or shuts down, backs up, for some
16 reason or another stops working?

17 A. Well, if a pump station stops working, in
18 the pump stations themselves they would have a check
19 valve built into them so that the flow doesn't come
20 back. When it shuts off or it quits working, the
21 flow coming into that would just fill up. There
22 wouldn't be any flow coming in out of the system, per
23 se, into it. If that check valve failed, where it
24 ties into a main line, there would be another valve,
25 and those are located on maps, and that valve can be

1 shut off, the repairs can be made either to the
2 mechanics or to the piping, the plumbing, that's in
3 that particular station.

4 Q. If a lift station, then, turns off, is there
5 the potential for sewage to back up into the lift
6 station?

7 A. If the lift station turns off, the only
8 back -- if you turned it off... Let me explain a
9 little bit. That lift station is designed to pump
10 one way, so when you turn it on, the check valve
11 opens and you push the flow out through into the
12 mains. When it shuts off, the check valve closes.
13 If that station shuts off either by power failure or
14 you manually turn it off or you have a mechanical
15 failure or for whatever reason, the flooding out of
16 it would be from it not operating and other
17 facilities pumping into it, then it would come out.

18 Q. So the homes or businesses that feed into
19 the pump station would continue to pump into the pump
20 station and the flow would then come out on the
21 surface at the pump station site. Am I understanding
22 correctly?

23 A. That is correct.

24 Q. And how many pump station sites are there in
25 the City of Osage Beach?

1 A. Approximately -- that changes daily, we're a
 2 pretty large system, but around 1,150.
 3 Q. So you have 1,150 pump stations that could
 4 back up if an event occurs such that the pump
 5 stations cannot push the sewage continuing through
 6 the system; is that right?
 7 A. That's correct.
 8 Q. Ultimately that's where it would end up,
 9 right? If it can't push the sewage uphill and the
 10 valve stays closed, the pump stations are going to
 11 overflow?
 12 A. That's correct.
 13 Q. Let's work up the line, then. The sewage
 14 is -- goes from the pump station to a lift station?
 15 A. Yes.
 16 Q. What happens if a lift station malfunctions
 17 or backs up or something occurs such that the lift
 18 station cannot continue to push the sewage through
 19 the pipe?
 20 A. Well, it is going to do the same thing as
 21 the small pump stations do, except for that you may
 22 have several hundred smaller pump stations pumping to
 23 it. So the volumes are much greater at the lift
 24 stations.
 25 Q. And how many lift stations do you have?

1 A. 57 what we would call majors.
 2 Q. And can you give Mr. Tichenor an idea of how
 3 many gallons would flow through one of those lift
 4 stations in a -- you know, at a peak hour, so to
 5 speak?
 6 A. Well, the largest lift station that I
 7 operate was capable of about 6,000 gallons a minute.
 8 Q. So at a peak time, the lift -- at least one
 9 lift station is generating 6,000 -- it could pump
 10 through 6,000 gallons in a minute?
 11 A. That's what it's capable of pumping.
 12 Q. And on a peak hour currently what would
 13 the -- what would be the flow going through that lift
 14 station?
 15 A. A peak hour?
 16 Q. Or minute. You can give me either one.
 17 A. A peak out of that station will probably
 18 pump in a peak hour probably 3 million.
 19 Q. Okay. In an hour. 3 million gallons in --
 20 A. It would be based on 3 million gallons per
 21 day but as a peak hour. In other words, if you
 22 pumped that peak hour for 24 hours, you would
 23 cumulate probably 3 or 4 million off of that station.
 24 Q. I understand. Now let's talk about peaking,
 25 because can you explain for Mr. Tichenor the concept

1 of peaking as compared to average daily flow?
 2 A. Yes. The average daily flows are something
 3 that you would record at the treatment plant or if
 4 you're doing flow capacities or finding out the usage
 5 out of a business or for whatever reason that you
 6 need to get flow rates, and that is exactly what it
 7 says, it's the average daily flow. Well, there are
 8 certain times in the day that we all have peak hours
 9 or peak times of the day. As an example, from --
 10 normally from 2:00 a.m. to 4 or 5:00 a.m. you have
 11 very little flow, and at that low flow time, it's
 12 still computed into the total flow for that 24-hour
 13 period. Another example would be first thing in the
 14 morning when everyone is up showering, eating
 15 breakfast. Lunchtime is another high peak volume,
 16 evening time. So you have varying peak times.
 17 It's a little more -- we have more peak
 18 times than ordinary communities because we're a
 19 tourist community, so we have a group of people that
 20 wake up like the rest of us at 6:30 or 7:00 a.m., and
 21 then we have another group of people that get out of
 22 bed at 11:00 or 12:00 and that's their breakfast
 23 time. So we have a peak shower time of, you know,
 24 7:00 a.m., 10:00, noon, 5:00, then we have a group
 25 that seems to think it's their shower and dinnertime

1 after 1:30 a.m.
 2 Q. Mr. King, since you mentioned a tourist
 3 community, is the flow experienced by the City of
 4 Osage Beach also experienced by what time of year,
 5 the seasons?
 6 A. Yes. Our flow is very seasonal.
 7 Q. Could you explain that to Mr. Tichenor,
 8 please?
 9 A. Well, the easiest way I can say it is the
 10 census that they took was, I think, 3,500 permanent
 11 population, and I have had reports that we've had
 12 weekends where our population exceeded 100,000.
 13 Q. Would that be in the summer?
 14 A. Yes.
 15 Q. And during the summer, does the City of
 16 Osage Beach experience an increase in sewage flow,
 17 then?
 18 A. Oh, yes, dramatic.
 19 Q. Can you explain to Mr. Tichenor how much
 20 increase you experience in the summer?
 21 A. Well, our flows have increased a little more
 22 in the winter in recent years because we're getting a
 23 little more year-round community, but our flows in
 24 the wintertime, I do not have that information right
 25 in front of me, but I would tell you that our flows

1 could be as low as 7 or 800,000 gallons a day and our
2 flows in peak tourist season could be as high as 2.6,
3 3 million gallon a day.

4 Q. So in the peak times during the summer, you
5 would have 2.6 to 3 million gallons a day going
6 through just the City of Osage Beach sewer systems?

7 A. On peak days, that could happen, or peak
8 hours.

9 Q. And the City of -- the Joint Sewer Board
10 also includes Osage Beach -- excuse me -- Lake Ozark;
11 is that right?

12 A. That's correct.

13 Q. All right. Do you know approximately how
14 many additional gallons per day Lake Ozark adds to
15 that amount going into the sewage treatment plant?

16 A. It would run about 10 or 12 percent of our
17 flow.

18 Q. So taking that 2.6 or 3 million, we're
19 looking at potentially up to possibly 3.3 million
20 gallons a day going into the sewage treatment plant
21 in the summer?

22 A. That would be a peak hour, peak day flow,
23 probably.

24 Q. Okay.

25 A. Peak day.

1 Q. We were talking about pump stations to lift
2 stations. Can you tell me, going back to pump
3 stations, how many homes or businesses are typically
4 hooked onto a single pump station?

5 A. Well, there are single pump stations that
6 have -- some of them have one pump in them and some
7 have two. So what we would call a simplex with one
8 pump in it, we would allow two to three homes on it.
9 A station that has two pumps in it, a duplex, would
10 typically allow up to 15 homes on it.

11 Q. Do you know how many homes and businesses
12 are served by the City of Osage Beach sewer system?

13 A. Well, in -- to get close to that, in water
14 connections we serve about 2,400 water connections,
15 and of those, we have about 400 of those are
16 commercial customers. We do have a lot of
17 out-of-town customers that are sewer only, like one
18 big resort that's sewer only. They are pretty huge.

19 Q. Has the City of Osage Beach received
20 requests for additional people or businesses wanting
21 to add onto and hook onto the City's sewer system?

22 A. Sure.

23 Q. Can you describe that for Mr. Tichenor?

24 A. Well, I would describe that as a daily
25 routine as far as the building in our area. I mean,

1 there are still condos being built daily. There's
2 several large developments that are on the drawing
3 board. One that comes to mind most recently would
4 be -- I'm not sure if you know who John Q. Hammons
5 is, Springfield.

6 HEARING OFFICER: I happen to know
7 who that is.

8 A. He's building a rather large complex right
9 in the heart of our city. There are a couple of
10 other very large developments on the drawing board,
11 and there's just -- there's a lot of that.

12 Q. (By Mr. Mauer) During your time at the City
13 of Osage Beach, do you have any information about the
14 sewage -- being on the sewer system as being
15 attractive or a reason why someone would want to
16 locate in the City of Osage Beach or annex into the
17 City of Osage Beach?

18 A. Yes. I mean, that's a big draw is our
19 infrastructure with water and sewer. There are a lot
20 of other smaller areas around the lake area that do
21 not have that sewer system that we have, and that's a
22 large expense to the homeowner. Once they're hooked
23 into our sewer system, they pay a subsidized rate
24 which is very low, subsidized through general funds,
25 and we take care of all the operations and

1 maintenance, including the electrical payment on
2 their sewer system. Once they are connected and
3 approved, they're done with it, other than just what
4 we feel is a very low monthly bill.

5 Q. Okay. I want to go back to BP-22 for a
6 minute, because I --

7 MR. MAUER: Just for one minute, Mr.
8 Tichenor, how long do you want to go today?

9 HEARING OFFICER: We need to shut
10 down at 5:00. I'm sorry, but I just have another
11 commitment.

12 MR. BROWNLEE: Is this a good time,
13 or not?

14 MR. MAUER: Actually, I just have a
15 couple of things I'd like to do, then we can end.

16 Q. (By Mr. Mauer) BP-22, Mr. King, if you
17 could come back up here, because I want to make sure
18 we've fully described the system. The green line
19 which begins on the east side of the Grand Glaize
20 Bridge and then runs basically south of the road,
21 that's the 24-inch line; is that right?

22 A. That's correct.

23 Q. Would you just show Mr. --

24 MR. BROWNLEE: Again, you guys are
25 standing in front of the -- maybe if you went on the

1 other side, Steve. There we go.

2 A. This piece -- the squares, the green line,
3 the one that's the block looking... I was in charge
4 of making them look different. So this 24-inch goes
5 to the treatment plant.

6 Q. (By Mr. Mauer) And could you describe and
7 locate for us the PVC line that runs through and
8 serves the east half of Osage Beach that ultimately
9 ends up being the 18-inch PVC line running to the
10 sewage treatment plant?

11 A. Sure. It starts approximately in this area
12 and it follows this route here, right along the
13 highway. It comes up here and it crosses right
14 through here. Now, this area also comes over and
15 ties into it, and then it comes right down State
16 Route D, and they both cross right in here and run
17 parallel to the treatment plant.

18 Q. All right.

19 A. So they're separated until they get to this
20 area.

21 Q. So when it hits -- and did you say that this
22 last box, square box, is that the top of the hill
23 for -- headed down to the sewage treatment plant?

24 A. Yes. This shows a manhole in this area
25 where they both go into and go from that area.

1 Q. And is that, then, the top of the hill
2 before it heads south?

3 A. It is.

4 Q. I mean until it heads to the river?

5 A. Yes.

6 Q. And is that last stretch of pipe where I see
7 no other feeder lines, no other manholes, is this
8 the -- is this the last downhill piece, then,
9 straight shot into the sewage treatment plant?

10 A. Yes.

11 Q. Is there anything along that line that
12 would -- any other feeder systems, any other pump
13 stations or anything that would stop the flow in the
14 event a break occurs?

15 A. No.

16 Q. So if a break occurs along this -- is this
17 kind of like the last stop on a roller coaster; when
18 it hits there, it's all downhill?

19 A. Yes.

20 Q. If the line breaks, can you tell Mr.
21 Tichenor what you would have to do in order to remedy
22 the problem with sewage? And for purposes of this
23 question, I want you to assume that sewage is
24 spilling out onto the surface. Okay? We'll talk
25 about sub-surface in a minute, but --

1 MR. BROWNLEE: I'm assuming your
2 question is the line breaks somewhere on the downhill
3 flow you've described as the roller coaster?

4 MR. MAUER: Yes. On Magruder's
5 property.

6 A. Lines severed in two? Is that what you're
7 saying?

8 Q. (By Mr. Mauer) Yes. The line has been
9 busted and sewage is coming out onto the surface.
10 What would you do, Mr. King?

11 A. Well, the first thing that would happen, how
12 I'd find out about it is that the treatment plant
13 would call and tell us the flow went down, or if we
14 happened to be standing there at the time it broke.
15 I wouldn't want to do that, but if I happened to be,
16 it would still hit the river. There's no way to
17 outrun it to the river.

18 At that point in time we would probably
19 start -- we would dispatch crews to major lift
20 stations and start shutting those down, those flows
21 down, and try to slow the flow down in that area to a
22 point where we can make repairs in there, start
23 dispatching pumper trucks from every community that
24 we can possibly call and all private haulers.

25 Q. Why would you need to dispatch pumper

1 trucks?

2 A. Well, to start with, you're going to have
3 spillage that you're not going to capture there, but
4 you're going to have to dig a sump in that area to be
5 able to work and capture what you can in that area
6 and start dispatching pumper trucks to lift stations
7 so that they -- they're going to overflow, but you
8 can minimize the flow that's going to go into the
9 lake and the river.

10 Q. Have you calculated how many pumper trucks
11 you would need to call in to try and man all of the
12 lift stations?

13 A. I did some rough numbers, and most pumper
14 trucks that we have are 1,500-gallon to 3,000-gallon
15 trucks. So being conservative, I used a 2,500-gallon
16 truck and a one-hour turnaround to get loaded, take
17 it to the treatment plant and empty it and get back,
18 which I felt was a pretty conservative time frame.
19 And if I took that we were running just a 2 million
20 gallon a day flow and broke that down, I estimated
21 that we'd need to run 135 trucks. And that would --
22 that's using a peaking factor for -- which I would
23 not be able to -- we would have stacking problems at
24 the treatment plant or where we're trying to load
25 with that many trucks. If we were running a peaking

1 factor of what the treatment plant is actually
 2 designed for, a peak hour, which is 9 million
 3 gallons, we would probably need somewhere in the
 4 neighborhood of 500 trucks.
 5 Q. Okay. Let's go back to the 135 trucks. How
 6 many pumper trucks does the City of Osage Beach have?
 7 A. One.
 8 Q. How many does the sewer treatment plant
 9 have?
 10 A. One.
 11 Q. How many does the City of Lake Ozark have?
 12 A. One.
 13 Q. Do you have an estimate of how far these
 14 pumper trucks would have to come from in order to get
 15 135 trucks there to man this emergency?
 16 A. It would probably be safe to say we would be
 17 beyond the boundaries of the Missouri state line.
 18 Q. Are you aware, are there enough pumper
 19 trucks within a 100-mile radius of Osage Beach to
 20 meet that kind of demand even if they could get there
 21 and were available?
 22 A. Not that I'm aware of.
 23 Q. All right. Let's talk, then, a little bit
 24 more about what you would do, because you said that
 25 the -- if you happen to see it because you were

1 standing there. Is it a routine part of your job or
 2 your subordinates' jobs to stand out on the sewage
 3 treatment line to watch for a break?
 4 A. No.
 5 Q. Do you routinely go out and look at that
 6 line to see if it's broken?
 7 A. We have a treatment plant personnel check
 8 the creek area every day and also have flow recorders
 9 down there that can check the flow continuously which
 10 is charted. And so if there was an interruption in
 11 that line or a leak or a rupture, we would know
 12 approximately what time of day that happened, and
 13 they would call us immediately.
 14 Q. Is the sewage treatment plant staffed
 15 24 hours a day, seven days a week?
 16 A. No.
 17 Q. What are the hours that the sewage treatment
 18 plant is staffed?
 19 A. I believe they leave at 4:00 in the
 20 afternoon, 7:00 to 4:00.
 21 Q. And how many days a week?
 22 A. Five days a week. And then they have a guy
 23 that comes in for, like, an hour or so on Saturday
 24 and Sunday just to do routine checks.
 25 Q. So is it possible -- what would happen,

1 then, let's say if -- well, let me ask, does this
 2 person come in on holidays?
 3 A. Yes.
 4 Q. All right. So if the break occurred on a
 5 Saturday or a Sunday, how long could it be before
 6 anyone is notified that we've got a break and sewage
 7 is spilling out onto the ground?
 8 A. Well, the potential is there for upwards of
 9 30 hours, I would suppose.
 10 Q. Do you have any estimate on how much sewage
 11 might escape out of these two lines if they're broken
 12 and let's even say 24 hours passed before the break
 13 is discovered?
 14 A. Well, it would be our average daily flow at
 15 the treatment plant during that time of the year.
 16 Q. And can you remind us again how much we're
 17 talking about?
 18 A. Well, as this last month, the month of
 19 April, I believe it was around 1.4, 1.5 million
 20 gallons a day.
 21 Q. If a million gallons spilled out onto the
 22 ground, where would that -- where would that sewage
 23 go?
 24 MR. BROWNLEE: Your Honor, it's so
 25 speculative, number one, he'd have to identify where

1 the spill occurred. If it occurred over by the Grand
 2 Glaize Bridge, it might not go where -- you know,
 3 directly into the Osage River.
 4 MR. MAUER: I'm sorry, your Honor. I
 5 thought it was understood.
 6 HEARING OFFICER: I understood you
 7 were referring to the section on the Magruder land,
 8 but restate your question.
 9 Q. (By Mr. Mauer) Mr. King, if the lines were
 10 busted along the property where Magruder is proposing
 11 to put their quarry and it wasn't discovered for
 12 24 hours because they -- it ruptured at night or
 13 after 4:00, where would that million gallons of
 14 sewage go?
 15 A. Well, it would go to the Osage River and be
 16 in New Orleans in a few weeks.
 17 Q. Tell me this, sir: Does the sewage
 18 treatment plant discharge into the river?
 19 A. It does.
 20 Q. Does it discharge -- what is the quality of
 21 the water that is discharged into the river?
 22 A. Well, the treatment plant continually meets
 23 high quality water, as you've tasted. It -- we -- I
 24 think our limitations at the treatment plant, we have
 25 about a 98 percent removal on what's called a BOD,

<p style="text-align: right;">Page 282</p> <p>1 biological oxygen demand and suspended solids which 2 are two of the tests that Department of Natural 3 Resources gauges the quality of your water. 4 Q. Does the Missouri Department of Natural 5 Resources regulate and supervise the discharge into 6 the Osage River? 7 A. Yes. 8 Q. Do you have any estimate on what would 9 happen to the City's sewer system via enforcement by 10 the DNR if a million gallons spilled into the Osage 11 River? 12 A. Well, I would assume there would be hefty 13 fines. We would be on all the local news, if not 14 national news, if it hit the recreational waters. 15 MR. MAUER: This might be a good 16 time. I can continue on this, but I'm kind of at a 17 point where I was going to move a little bit if you 18 don't mind ten minutes, otherwise I can continue, 19 whichever you would prefer. 20 HEARING OFFICER: That's fine, 21 Mr. Mauer. With that, that concludes the hearing for 22 the day. We will reconvene at 9:00 a.m. in the 23 morning, and with that we're off the record. 24 MR. MAUER: I'm sorry. I didn't -- 25 what time?</p>	<p style="text-align: right;">Page 284</p> <p>1 needs to be on the record, but tomorrow I'm going to 2 need to ask for your indulgence to allow me to break 3 the testimony of Mr. King because I have two 4 witnesses that I had planned for first thing in the 5 morning and I will need to -- and I don't control 6 them. They're appearing at our bequest, and so I 7 would need -- with your permission, I would like to 8 take them out of order so I can put them on and be 9 done before I finish with Mr. King. 10 HEARING OFFICER: I have no problem 11 with that. 12 MR. BROWNLEE: Who are they, Steve? 13 MR. MAUER: Gary Hutchcraft and Greg 14 Gagnon. 15 HEARING OFFICER: All right. So 16 there will be two witnesses in the morning, then we 17 will resume Mr. King's testimony. 18 MR. MAUER: Yes, your Honor. 19 HEARING OFFICER: All right. Any 20 other housekeeping matters? We are adjourned. Off 21 the record. 22 23 24 25</p>
<p style="text-align: right;">Page 283</p> <p>1 HEARING OFFICER: 9:00. 2 MR. POLHEMUS: Mr. Tichenor, can I 3 ask a quick question? I wanted to confirm, BP-51 4 with Mr. McDonald's testimony, that was the new map, 5 the February '01 map. I thought you had admitted 6 that right after it was offered. 7 HEARING OFFICER: No. That was... 8 You wish that -- 9 MR. MAUER: Yes, we would like that 10 to be admitted. 11 HEARING OFFICER: BP-51, which is the 12 February 2nd detailed map, or it's Bates stamped 13 February 2nd, is offered into evidence. Any 14 objection? 15 MR. MCGOVERN: No. 16 HEARING OFFICER: No objection? It 17 is received. Anything further, then, before we wrap 18 up? 19 MR. MAUER: Other than BP-22, your 20 Honor. 21 HEARING OFFICER: BP-22. Any 22 objection? No objection? It is received. 23 MR. MAUER: That's all I have. 24 HEARING OFFICER: And with that -- 25 MR. MAUER: I don't know if this</p>	<p style="text-align: right;">Page 285</p> <p>1 CERTIFICATE OF REPORTER 2 3 4 I, Judy K. Moore, Certified Court Reporter 5 within and for the State of Missouri, do hereby 6 certify that the hearing aforementioned was held at 7 the time and in the place previously described. 8 9 IN WITNESS WHEREOF, I have hereunto set my 10 hand and seal. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <hr style="width: 20%; margin-left: auto; margin-right: 0;"/> <p style="text-align: right;">Certified Court Reporter within and for the State of Missouri.</p>